TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1939

No. 354

FEDERAL HOUSING ADMINISTRATION REGION NO. 4, STATE DIRECTOR RAYMOND FOLEY, PETITIONER

vs.

RUTH BURR, DOING BUSINESS AS SECRETARIAL SERVICE BUREAU

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MICHIGAN

PETITION FOR CERTIORARI FILED SEPTEMBER 2, 1939
CERTIORARI GRANTED OCTOBER 23, 1939

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1939

No. —

FEDERAL HOUSING ADMINISTRATION, REGION NO. 4, STATE DIRECTOR RAYMOND FOLEY, PETITIONER

vs.

RUTH BURR, DOING BUSINESS AS SECRETARIAL SERVICE BUREAU

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MICHIGAN

INDEX

40323

In Supreme Court of Michigan

RUTH BURR, DOING BUSINESS AS SECRETARIAL SERVICE BUREAU, PLAINTIFF

vs.

ONE HEFFNER, WHOSE FIRST NAME IS UNKNOWN, BUT WHOSE PERSON IS WELL KNOWN, ET AL., DEFENDANTS; FEDERAL HOUSING ADMINISTRATION, REGION NO. 4, GARNISHEE DEFENDANT AND APPELLANT

Appeal from Wayne

Plaintiff's attorneys, Seaborg and Rice. Defendants' attorneys, John C. Lehr.

Docket entries

1938
Oct. 20—Application for leave to appeal filed.
" 22—Brief in opposition filed.
Nov. 10—Application granted.
Dec. 13—Record on appeal filed.
1939
Mar. 2—Note of argument filed.
Apr. 11—Argued and submitted.
Jun. 5—Affirmed, costs.
" 19—Record returned to Court below.
" 20—Petition for stay of proceedings filed.
" 20—Petition for stay of proceedings granted.

B In Supreme Court of Michigan

[Title omitted.]

Order granting application for leave to appeal

Nov. 10, 1938

In this cause an application is filed by garnishee defendant for leave to appeal from the judgment of the Circuit Court for the County of Wayne, and a brief in opposition thereto having been filed by plaintiff, and due consideration thereof having been had by the Court, it is ordered that the application be and the same is hereby granted.

C [Title omitted.]

D In Circuit Court of Wayne County

Recital as to order allowing appeal

The order allowing this appeal was dated November 10, 1938.

E In Circuit Court of Wayne County

Calendar entries

1930
Nov. 6—Judgment rendered:
Damages $102.63

1932
Jan. 13—Transcript filed:
Costs 7.00
C. C. costs 1.50
Transcript—
Fi. Fa.
Total $111.13

Jan. 13—Praecipe filed; Fi. Fa. issued.
Feb. 15—Fi. Fa. returned unsatisfied, filed.

1938
Mar. 4—Affidavit for return of garnishment filed.
Mar. 7—Motion for judgment against garnishee defendant filed.
Mar. 31—Answer of F. H. A. filed.
June 11—Motion for judgment against garnishee defendant filed; heard and taken under advisement; court sheet, Gilbert.
F Sept. 12—Opinion of the Court signed, filed; opinion of the Court ordered judgment for plaintiffs against garnishee defendant, signed, filed; court sheet, Judge Gilbert.
Sept. 12—Judgment entered for plaintiff and against garnisheee defendant in amount of seventy-one dollars, eleven cents; plaintiff to have execution therefor; court sheet, Judge Gilbert.
Sept. 21—Order granting stay of 20 days following entry of judgment, etc., filed.
Nov. 15—Claim of appeal, notice of appeal, affidavit of service, filed, $5.00.
Dec. 9—Record on appeal signed and certified this date; court sheet (Judge Parm C. Gilbert, by Clyde I. Webster).
Dec. 9—Record on appeal, signed, filed (Clyde I. Webster).
Dec. 19—Notice of transmission of record on appeal to the Supreme Court filed.

2 In Circuit Court of Wayne County

Statement of reasons and grounds of appeal

Filed December 9, 1938

The appellant claims that the trial court erred in granting judgment in favor of the plaintiff and against the garnishee defendant, appellant, for the reasoif:

That the Federal Housing Administration is an executive branch of the United States Government, which is a sovereign body politic, and can not be sued without its consent, and is not within the jurisdiction of this court.

In Circuit Court of Wayne County

Stipulation of settled record

Filed December 9, 1938

It is hereby stipulated by and between Seaborg and Rice, attorneys for plaintiff and appellee, and John C. Lehr, United States Attorney for the Eastern District of Michigan, by Kenneth D. Wilkins, Assistant United States Attorney for said district, attorneys for garnishee defendant and appellant, that the proceedings and facts of record in said cause in the trial Court are as follows:

1. The plaintiff and appellee, Ruth Burr, doing business as Secretarial Service Bureau, obtained a final judgment against the principal defendants, one Heffner, whose first name is unknown but
3 whose person is well known, and George Brooks, doing business as Heffner and Brooks, on the 5th day of November 1930.

2. That a writ of garnishment, having been duly issued out of the Circuit Court for the County of Wayne in said case, was served upon garnishee defendant, Federal Housing Administration, Region #4, State Director Raymond Foley, appellant herein, on March 5, 1938.

3. That said garnishee defendant caused his appearance to be entered by John C. Lehr, United States Attorney for the Eastern District of Michigan, on March 7, 1938, a copy of which appearance is annexed hereto, marked Exhibit A.

4. That an answer or disclosure was filed by appellant on March 31, 1938, a copy of which is attached hereto, marked Exhibit B.

5. That a motion for judgment in favor of the appellee and against the garnishee defendant and appellant was filed on June 11, 1938, a copy of which motion is attached hereto and marked Exhibit C.

6. That pursuant to notice and with both parties hereto being represented in Court, said motion was heard by the Honorable Parm C.

Gilbert, Circuit Judge then sitting in Wayne County, and the opinion of the Court filed on September 6, 1938, a copy of which opinion appears elsewhere in this record.

7. That judgment for the plaintiff and appellee was duly rendered and entered by the Honorable Clyde I. Webster, one of the Circuit Judges for Wayne County, a copy of which judgment appears elsewhere in this record.

4 8. That an order granting a stay of twenty days in which to move for new trial or appeal was granted by the Honorable Parm C. Gilbert on September 21, 1938, a copy of which order is annexed hereto and marked Exhibit D.

9. That thereafter, pursuant to motion made to the Supreme Court of Michigan, an order was granted on November 10, 1938, allowing a delayed appeal in this cause, a copy of which is attached hereto and marked Exhibit E.

10. That claim of appeal was duly served and filed by the appellant on November 15, 1938, copy of which is attached hereto, marked Exhibit F.

11. It is further stipulated and agreed that any journal or calendar entries omitted or made, which appear to conflict with the above and foregoing statement of facts and record, are erroneous and that the foregoing statement is true for the purpose of this case.

12. It is further stipulated and agreed that the time for filing the settled record has been extended from time to time as necessity required, by stipulation of counsel and order of the court, until December 16, 1938.

SEABORG & RICE,
Attorneys for Plaintiff and Appellee.

JOHN C. LEHR,
United States Attorney,
By KENNETH D. WILKINS,
Assistant U. S. Attorney,
Attorneys for Garnishee Defendant and Appellant.

5 CERTIFICATION

I do hereby certify that the foregoing statement of proceedings and facts fairly presents the question for review and that, on motion duly made and consented to by counsel, the time for filing the record has been extended to December 16, 1938.

PARM C. GILBERT,
Circuit Judge.
By CLYDE I. WEBSTER,
In his absence.

Dated: Detroit, Michigan, December 9, 1938.

6 *Exhibit A*

APPEARANCE

(Filed March 7, 1938)

To the CLERK OF SAID COURT:

Please enter the appearance of the undersigned as attorneys for Federal Housing Administration, Region #4, State Director Raymond Foley, Garnishee Defendant in the above-entitled cause.

JOHN C. LEHR,
United States Attorney.
By PETER P. GILBERT,
Assistant United States Attorney.

To SEABORG & RICE,
Attorneys for Plaintiff,
827 Penobscot Bldg., Detroit, Michigan.

Please take notice we have this day entered our appearance as attorneys for the Federal Housing Administration, Region #4, State Director Raymond Foley, Garnishee Defendant in the above-entitled cause.

JOHN C. LEHR,
United States Attorney.
By PETER P. GILBERT,
Assistant United States Attorney.

7 *Exhibit B*

ANSWER AND DISCLOSURE

(Filed March 31, 1938)

The Federal Housing Administration by Raymond M. Foley, State Director for the State of Michigan for answer and disclosure in the above-entitled case, says:

First, The above-named defendant, George W. Brooks, is no longer connected with the Federal Housing Administration, said George W. Brooks having died on the 8th day of March 1938.

Second, That there was due and owing to said George W. Brooks by the Federal Housing Administration at the time of his death the sum of seventy-one dollars and eleven cents ($71.11), which said amount remains unpaid.

Third, That the Federal Housing Administration is an agency of the United States Government and is, therefore, not subject to garnishee proceedings.

FEDERAL HOUSING ADMINISTRATION.
By: RAYMOND M. FOLEY,
State Director.

Raymond M. Foley, State Director of the Federal Housing Administration, on oath says that the foregoing is a true and correct statement to the best of his knowledge and belief.

Subscribed and sworn to before me, a Notary Public in and for the State of Michigan, this 29th day of March 1938.

PATRICIA M. THOMAS.

My commission expires November 3, 1940.

8 *Exhibit C*

MOTION FOR JUDGMENT AGAINST GARNISHEE DEFENDANT

(Filed June 11, 1938)

Now comes the plaintiff, by Seaborg & Rice, her attorneys, and moves the court to enter a judgment against the garnishee defendant, Federal Housing Administration, Region #4, State Director, Raymond Foley, for the reasons set forth in the affidavit of Arthur H. Rice, hereto attached.

SEABORG & RICE,
Attorneys for Plaintiff,
827 Penobscot Building, Detroit, Michigan,

Affidavit of Arthur H. Rice

STATE OF MICHIGAN,
County of Wayne, ss:

Arthur H. Rice, being first duly sworn, deposes and says that he is associated with the firm of Seaborg & Rice, attorneys for the plaintiff in the above-entitled cause.

Deponent further says that a writ of garnishment was duly served upon the garnishee defendant in the above-entitled cause, and that a disclosure was filed by the garnishee defendant, admitting
9 liability to the principal defendant, George W. Brooks, in the sum of seventy-one and 11/100 ($71.11) dollars.

Deponent further says that on November 5, 1930, a judgment was rendered against the principal defendants in favor of this plaintiff in the Common Pleas Court for the City of Detroit, in the amount of one hundred nine and 63/100 ($109.63) dollars, less payments made, leaving a balance due of seventy-seven and 13/100 ($77.13) dollars, a transcript of which judgment was filed with the Clerk of the Circuit Court on January 13, 1932.

Wherefore plaintiff moves that a judgment be rendered against the garnishee defendant in the amount of seventy-one and 11/100 ($71.11) Dollars.

Further deponent saith not.

ARTHUR H. RICE.

Subscribed and sworn to before me this 31st day of March A. D. 1938.

HELEN SZACHTA,
Notary Public, Wayne County, Michigan.

My commission expires Aug. 27, 1941.

10 *Exhibit D*

ORDER FOR STAY OF PROCEEDINGS

(Filed September 21, 1938)

In the above entitled cause, in accordance with the rule of Court, and on request of counsel for defendants, it is ordered that a stay of twenty days following the entry of judgment in this cause be and is hereby granted, within which a motion for new trial may be made, claim of appeal filed or such other action taken as counsel may advise.

PARM C. GILBERT,
Circuit Judge.

Dated September 12th, 1938.

Exhibit E

ORDER GRANTING APPEAL

(Filed November 10, 1938)

At a session of the Supreme Court of the State of Michigan, held at the Supreme Court Room, in the Capitol, in the City of Lansing, on the tenth day of November, in the year of our Lord one thousand nine hundred and thirty-eight.

Present the Honorable Howard Wiest, Chief Justice; Henry M. Butzel, George E. Bushnell, Edward M. Sharpe, William W. Potter, Bert D. Chandler, Walter H. North, Thomas F. McAllister, Associate Justices.

11 In this cause an application is filed by garnishee defendant, for leave to appeal from the judgment of the Circuit Court for the County of Wayne, and a brief in opposition thereto having been filed by plaintiff, and due consideration thereof having been had by the Court, it is ordered that the application be and the same is hereby granted.

STATE OF MICHIGAN, *ss:*

I, Jay Mertz, Clerk of the Supreme Court of the State of Michigan, do hereby certify that the foregoing is a true and correct copy of an order entered in said court in said cause; that I have compared the same with the original, and that it is a true transcript therefrom, and the whole of said original order.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Supreme Court at Lansing, this 11th day of November, in the year of our Lord one thousand nine hundred and thirty-eight.

JAY MERTZ, *Clerk.*

Exhibit F

CLAIM OF APPEAL

(Filed November 15, 1938)

The Federal Housing Administration, Region #4, State Director Raymond Foley, Garnishee Defendant, claims an appeal from the judgment entered on September 12, 1938, by Clyde I. Webster, Circuit Judge for Wayne County, based upon the written opinion of Judge Parm C. Gilbert, sitting for the Wayne County Circuit.

12 Appellant takes an appeal in the nature of certiorari, leave to file a belated appeal having been granted by the Supreme Court on November 10, 1938.

JOHN C. LEHR,
United States Attorney,
KENNETH D. WILKINS,
Assistant United States Attorney,
Attorneys for Garnishee Defendant and Appellant,
870 Federal Building, Detroit, Michigan.

Dated November 13, 1938.

NOTICE OF CLAIM OF APPEAL

(Filed November 15, 1938)

SEABORG & RICE,
827 Penobscot Building, Detroit, Michigan,
Attorneys for Plaintiff and Appellee:

Please take notice that attached hereto is a copy of claim of appeal, this day filed with the Circuit Court for the County of Wayne. Also, you are hereby notified that the appeal fee of $..00 has been paid.

JOHN C. LEHR,
United States Attorney,
KENNETH D. WILKINS,
Assistant United States Attorney,
Attorneys for Garnishee Defendant and Appellant,
870 Federal, Building, Detroit, Michigan.

Dated November 13, 1938.

13 AFFIDAVIT OF SERVICE

STATE OF MICHIGAN,
County of Wayne, ss:

Kenneth D. Wilkins, of the City of Detroit, State of Michigan, being duly sworn, deposes and says that on the 15th day of November, 1938, he did serve a copy of the claim of appeal and notice upon Sea-

borg & Rice, attorneys for the plaintiff and appellee, by leaving same at their office at 827 Penobscot Building, Detroit, Michigan, during office hours.

KENNETH D. WILKINS.

Subscribed and sworn to before me this 15th day of November, A. D. 1938.

J. THOMAS SMITH,
Notary Public, Wayne County, Michigan.

My commission expires 11-28-38.

14 In Circuit Court of Wayne County

Opinion of the Court

Filed September 12, 1938

In this cause plaintiff corporation has obtained final judgment against the defendant, and garnishment was properly served upon the defendant Federal Housing Administration through its proper representatives in Wayne County, Michigan.

The Federal Housing Administration, Garnishee Defendant, filed a disclosure in response to such writ of service, setting forth an indebtedness due the Principal Defendant at the time of service of the writ in the amount of $71.11.

Plaintiff filed motion for judgment against the Garnishee Defendant and the Garnishee Defendant resists entry of judgment, asserting that the Federal Housing Administration is entitled to immunity, which it asserts is granted to United States Government from garnishment process.

Plaintiff's contention is that the Federal Housing Administration is doing, and has been performing a commercial insurance business, and that its claim of immunity is without force.

Without reciting the statute or regulations which may possibly be in force concerning the business of Federal Housing Administration, it is sufficient to say that the nature of its business is that of an insurer of loans. That is to say, as a loan may be made by a bank or

15 other party to any person or persons desiring to build or improve residence property or expend money in any similar manner, such project is looked over and examined by the representatives of the Federal Housing Administration, and, if found acceptable, it joins with the party lending the money in approving the loan, and issues insurance—virtually underwriting the loan to a certain extent—so as to make the investment more desirable.

The Housing Administration is not connected with the several transactions where this insurance is written, other than as insurer. Its personnel and office expenses are paid from the Treasury at Washington—that is, with Government funds—and it is no doubt true that

the defendant employs such persons as are either appointed or approved by the executive department of the Government.

The Court holds that the defendant, Federal Housing Administration, is subject to a writ of garnishment in this case, and that judgment should be entered against it in accordance with its disclosure.

There is nothing in the set-up or operations of the Federal Housing Administration to constitute it in any wise a part of the Federal Government. Its duties are not in any wise essential to any function of Government. If it was to cease business at this hour, no governmental effort or purpose would be modified or suffer in the least; and so long as it continues to operate it does not in any sense or in any degree perform or carry out nor aid in performing any governmental office or service.

So far as its operations are concerned, they are purely commercial, and it and its employes are conducting an insurance business
16 pure and simple. The mere fact that it may report to some department of Government, or that its employes or personnel may be paid through the Government Treasury, does not, in the opinion of the Court, characterize the defendant Administration nor such employes or personnel as a part of the Federal Government.

Many agencies are authorized to do certain things by the Government, which agencies do not necessarily perform any Governmental function; and the same is true of the Federal Housing Administration.

Judgment may be entered for the plaintiff in accordance with the motion.

PARM C. GILBERT,
Circuit Judge.

Dated September 6, 1938.

17 In Circuit Court of Wayne County

Judgment

Filed September 12, 1938

At a session of the Circuit Court for the County of Wayne, held at the Court House, in the City of Detroit, on the 12th day of September 1938. Hon. Parm C. Gilbert, Circuit Judge.

In this cause, judgment having heretofore been entered in favor of the plaintiff and against the principal defendant; and the garnishee defendant having filed a disclosure herein, from which it appears that the said garnishee defendant is indebted to the principal defendant in the sum of $71.11; and the Court being fully advised in the premises;

Thereupon, upon motion of counsel for plaintiff, it is considered and adjudged that the said plaintiff do recover against the said garnishee defendant the amount of his indebtedness to the principal defendant and that plaintiff have execution therefor.

18 In Supreme Court of Michigan

[Title omitted.]

Minute entry of argument and submission

April 11, 1939

This cause coming on to be heard is argued by Mr. Smith for the defendants and is submitted on briefs on the part of the plaintiff.

19 In Supreme Court of Michigan

RUTH BURR, DOING BUSINESS AS SECRETARIAL SERVICE BUREAU, PLAINTIFF-APPELLEE

v.

ONE HEFFNER, WHOSE FIRST NAME IS UNKNOWN, BUT WHOSE PERSON IS WELL KNOWN, AND GEORGE BROOKS, DOING BUSINESS AS HEFFNER AND BROOKS, PRINCIPAL DEFENDANTS; FEDERAL HOUSING ADMINISTRATION, REGION NO. 4, STATE DIRECTOR RAYMOND FOLEY, GARNISHEE DEFENDANT AND APPELLANT

Before the entire bench.

Opinion

Filed June 5, 1939

BUSHNELL, J. This is an appeal from a judgment entered against a garnishee defendant in the sum of $71.11. Leave to appeal was granted because of the importance of the question involved, namely, Is the Federal Housing Administration, a governmental agency, subject to being sued as garnishee defendant through its State Director? Appellant says this cannot be done in the absence of specific statutory consent.

Plaintiff held an unsatisfied judgment against one Heffner and George Brooks, doing business as Heffner and Brooks. This
20 judgment was obtained on November 5, 1930. The writ of garnishment was served on March 5, 1938. On March 7, 1938, an appearance was entered for the garnishee defendant by the United States Attorney for the Eastern District of Michigan. The answer and disclosure filed on March 31, 1938, stated that defendant Brooks was no longer connected with the Federal Housing Administration, he having died on March 8, 1938, and that there was due and owing to him by the garnishee defendant the sum of $71.11. No question is raised in this appeal as to whether or not the entire sum was garnishable, whether or not the money represented wages due Brooks, or the effect of his death.

The Federal Housing Administration was created by congressional enactment. See 12 U. S. C. A. § 1701 et seq. The statute provides that—

"The Administrator shall, in carrying out the provisions of this title and titles II and III, be authorized in his official capacity, to sue and be sued in any court of competent jurisdiction, State or Federal." Sec. 1702.

In the recent case of Keifer & Keifer v. Reconstruction Finance Corporation, 83 L. ed. (Adv.) 512, decided February 27, 1939, the court called attention to the use of independent corporate facilities for governmental ends and said that:

"In spawning these corporations during the past two decades, Congress has uniformly included amenability to law. Congress has provided for not less than forty of such corporations discharging governmental functions, and without exception the authority to-sue-and-be-sued was included."

The footnote apearing at this point in the court's opinion contains a list of those referred to, including the "Federal Housing Administrator (August 23, 1935) 49 Stat. at L. 684, 722, chap. 614, 12 U. S. C. A."

Does the phrase "sue-and-be-sued" include a writ of garnishment?

A writ of garnishment is a civil process at law, Webster v. Bennett, 247 Mich. 616, in the nature of an equitable attachment, Posselius v. First Nat'l. Bank, 264 Mich. 687. See also Insurance Company v. Circuit Judge, 105 Mich. 566. The usual test as to the liability of a garnishee is whether the principal defendant could have maintained an action against the garnishee to recover the property in question. Nessen Lbr. Co. v. Bennett Lbr. Co., 223 Mich. 349. The word "sue" is defined in Bouvier's Law Dictionary, 8th ed., as meaning "to commence or to continue legal proceedings for the recovery of a right." See Porto Rico v. Resaly y Castillo, 227 U. S. 270, 57 L. ed. 509.

Buchanan v. Alexander, 4 How. 18, 11 L. ed. 857, holds that money in the hands of a governmental officer cannot be reached by a writ of garnishment, but the question of waiver of immunity is not considered in the Buchanan opinion. Although the question of garnishment was not before the court in Keifer & Keifer v. Reconstruction Finance Corp., 83 L. ed. (Adv.) 512, and waiver of immunity was not expressly stated as to the Regional Agricultural Credit Corporation directly involved and which the Reconstruction Finance Corporation was authorized to create, there seems to remain little doubt from the reasoning of the opinion of the court that, if "Congress has embarked upon a general policy of consent for suits against the government sounding in tort even where there is no element of contract," it should follow that, where express consent is given in the federal act to "sue and be sued" without any limitation upon the

permissive language, this provision for suits against the administrator "in any court of competent jurisdiction, State or Federal," must have contemplated the provisions of the law in the several states, including that of Michigan, where it is settled that a writ of garnishment is a civil process.

In Federal Land Bank v. Priddy, 295 U. S. 229, 79 L. ed. 1408, it was held that, although the bank is a governmental instrumentality and subject to suit and judicial process only as Congress may determine, a suit begun by attachment against real estate owned by the bank would not be vacated because of governmental immunity. The statute involved in the case was section 4 of the Federal Farm Loan Act, which provides that Federal Land Banks "shall have power * * * to sue and be sued, complain, interplead, and defend, in any court of law and equity as fully as natural persons." The additional language of the Federal Farm Loan Act does not amplify the waiver of immunity. No reported cases are available with respect to writs of garnishments issued against the Federal Housing Administration, but there are cases involving garnishments against the Home Owners' Loan Corporation. One is Home Owners' Loan Corporation v. Hardie & Caudle, (Tenn. 1936), 100 S. W. (2) 238, 108 A. L. R. 702, in which the Supreme Court of Tennessee held that the corporation was not subject to garnishment. Another is that of Central Market v. King (Neb. 1937), 272 N. W. 244, in which the Supreme Court of Nebraska considered the Tennessee opinion and, nevertheless, held that the Home Owners' Loan Corporation was subject to garnishment.

The strength of the Nebraska opinion, which turned upon the question of whether or not the Reconstruction Finance Corporation was engaged in a governmental function, may be questioned in the light of the recent case of Graves v. New York, — U. S. —, 83 L. ed. (Adv.) 577. We agree with the result reached by the Nebraska court. However, we do not plant decision upon this question but rather upon the waiver of immunity expressed in the words "sue and be sued."

Appellant quotes the following from Berger v. Schenley Distillers Corp., 277 Mich. 159, in support of the argument that in Michigan a state administrative agency is not subject to garnishment.

"The liquor control commission is a State administrative agency, and not a corporate entity of any nature whatsoever within the sense of the mentioned statute (3 Comp. Laws 1929, § 14885, Stat. Ann. § 27.1883) and, therefore, cannot be served and proceeded against as a garnishee."

The argument advanced is a distortion of the quoted language of the opinion, because the statute sets up the procedure to be followed where the principal defendant is a nonresident. The meaning of the quoted language is that the State Administrative Agency does

not come within the provisions of the mentioned statute, and that is all.

Appellant urges the controlling value of McCarthy v. U. S. Shipping Board Merchant Fleet Corporation, 53 Fed. (2) 923. That case was based on the Merchant Marine Act of 1920, 41 Stat. 988, which does not contain the broad waiver of immunity found in the Federal Housing Act.

The Authority to "sue and be sued" must necessarily include garnishment, and the judgment entered below against the Federal Housing Administration, garnishee defendant, should be affirmed. It is so ordered, with costs to appellee.

(Signed) George E. Bushnell.
Henry M. Butzel.
Howard Wiest.
Edward M. Sharpe.
Bert D. Chandler.
Thomas F. McAllister.
Walter H. North.
William W. Potter.

[File endorsement omitted.]

24 In Supreme Court of Michigan

40423

Ruth Burr, Doing Business as Secretarial Service Bureau, plaintiff

vs.

One Heffner, Whose First Name Is Unknown, But Whose Person Is Well Known, et al., defendants; Federal Housing Administration, Region No. 4, garnishee defendant and appellant

Judgment

June 5, 1939

The record and proceedings in this cause having been brought to this Court by appeal from the Circuit Court for the County of Wayne, and the same, and the grounds of appeal specified therein, having been seen and inspected and duly considered by the Court, and it appearing to this Court that in said record and proceedings, and in giving of judgment in said Circuit Court, there is no error, Therefore it is ordered and adjudged that the judgment of said Circuit Court for the County of Wayne be and the same is hereby in all things affirmed, and that the appellee do recover of the appellant, his costs, to be taxed, and that he have execution therefor.

25 In Supreme Court of Michigan

[Title omitted.]

Order granting stay of proceedings

June 20, 1939

In this cause a motion is filed by the appellant for a stay of proceedings and nothing in opposition thereto, having been filed by the appellee, and due consideration thereof having been had by the Court, It is ordered that all proceedings for the enforcement of the judgment in the cause be stayed until the further order of this Court, without bond.

26 [Clerk's certificate to foregoing transcript omitted in printing.]

U. S. GOVERNMENT PRINTING OFFICE: 1939

Supreme Court of the United States

Order allowing certiorari

Filed October 23, 1939

The petition herein for a writ of certiorari to the Supreme Court of the State of Michigan is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Butler took no part in the consideration and decision of this application.

tween the attempted garnishment below and an attempt to attach salary owing to an employee of one of the regular departments of the Government, such as Commerce or Agriculture. Such a suit is against the United States and the only question is whether the United States has consented to be sued for that purpose and in that fashion. Any suit against the Administrator which is authorized by the Act is in fact brought against the United States with its consent.

The Trading With the Enemy Act, approved October 6, 1917, c. 106, 40 Stat. 411, presented a similar situation. That Act provided for the appointment of an alien property custodian (now the Attorney General) to administer its provisions with respect to seizure, custody, and management of enemy property, and in Section 12 provided that all money coming into the hands of the custodian should be deposited in the Treasury. Section 9 of the Act provided that any person claiming an interest in seized property might institute suit for recovery against "the alien property custodian or the Treasurer of the United States, as the case may be." Such suits have uniformly been held to be suits against the United States and strictly subject to the terms of the Congressional consent. *Banco Mexicano* v. *Deutsche Bank*, 263 U. S. 591, 602–603; *Becker Steel Co.* v. *Cummings*, 296 U. S. 74, 78; *Cummings* v. *Deutsche Bank*, 300 U. S. 115, 118. A decision in such a suit is *res judicata* in another suit brought against the United States in the Court of Claims, *Escher* v. *United States*, 68 C. Cls. 473, 479, and the plaintiff in a suit brought against the custodian is not entitled to

costs or interest. *Vowinckel* v. *First Federal Trust Co.*, 15 F. (2d) 872, 874.

In *Cummings* v. *Societe Suisse*, 85 F. (2d) 287 (App. D. C.) (reaffirmed, 99 F. (2d) 387, certiorari denied, 306 U. S. 631) a Swiss corporation brought suit against the custodian pursuant to Section 9 of the Act, and the custodian purporting to represent the United States filed a counterclaim to recover property which, previously, had been returned to the corporation. It was held that the suit was in fact against the United States and that the custodian was authorized to interpose the counterclaim; that "it is of no consequence that, as a matter of convenience, they [the United States] have authorized and appointed an agent to be sued in their stead"; that the custodian is sued "only in his official capacity" and is suable "only because the United States have consented to be sued in his name" 85 F. (2d) at 289. It is the United States which has the obligation of complying with a judgment against the custodian. *Becker Steel Co.* v. *Cummings*, 296 U. S. 74, 81.

Suits brought against the Director General of Railroads in his official capacity were likewise suits against the United States consented to by Section 10 of the Federal Control Act, c. 25, 40 Stat. 451, 456; *Davis* v. *O'Hara*, 266 U. S. 314, 317; *Dahn* v. *Davis*, 258 U. S. 421, 428. See also *Minnesota* v. *Hitchcock*, 185 U. S. 373, 387–388.

E. IT IS IMMATERIAL WHETHER THE FEDERAL HOUSING ADMINISTRATION, OR THE ADMINISTRATOR, IS A CORPORATION; IF MATERIAL, NEITHER IS A CORPORATION

In *United States* v. *Maxwell*, 307 U. S. 200, 203, the Court found it unnecessary to determine whether Con-

gress, by authorizing the Administrator to sue and be sued, intended to give him "the status of a corporation or other entity distinct from the United States" and thereby to deprive the Administration of the statutory priority in bankruptcy of the United States.[39] Whether a federal agency is a corporation is doubtless a factor bearing upon whether it is suable, both as indicating a degree of separation from the United States and because it may be a reasonable inference that a corporation has the powers and liabilities usual to corporations. Compare *Keifer & Keifer* v. *R. F. C.*, 306 U. S. 381. But corporate status, without more, is an insufficient basis for inferring liability to attachment or execution even in a suit clearly authorized. Compare *Federal Land Bank* v. *Priddy*, 295 U. S. 229.

Here, however, it has been shown that the Federal Housing Administration functions as a regular part of the Government, and Congress has expressly authorized it to sue and be sued. The intimation of the Court in the *Marxen* case that the Administrator might be a corporation was based on his statutory authority to sue and be sued. And if the supposed corporate status depends on the consent to be sued it would beg the question to conclude from corporate status consent to be garnished, for whether consent to be sued includes consent to be garnished is the question to be determined. Accordingly it is thought that whether the Administrator or the Administration has corporate

[39] In *Keifer & Keifer* v. *R. F. C.*, 306 U. S. 381, 390–391, in a footnote the "Federal Housing Administrator" is listed among a compilation of "corporations discharging governmental functions."

status does not affect the decision of the question here presented.

If material, it would be difficult to say that Congress has made the Administrator or Administration a corporation. When Congress has created a corporation it customarily has expressly declared the institution either to be a corporation, a body corporate, to have the powers of a corporation, or to have perpetual succession.[40] It often expressly entitles the institution a

[40] Thus each Federal Land Bank shall become "a body corporate," 39 Stat. 360, 363; the American Legion is "created and declared to be a body corporate," 41 Stat. 284; the Belleau Wood Memorial Association is "created a body corporate," 42 Stat. 1441. "Each Federal Intermediate Credit Bank shall have all the usual powers of corporations, and shall have power to sue and be sued both in law and equity, and for purposes of jurisdiction shall be deemed a citizen of the state where it is located," 42 Stat. 1451, 1455; the Grand Army of the Republic "is hereby created a body corporate and politic," 43 Stat. 358, 359; the United States Blind Veterans of the World War is "hereby created and declared to be a body corporate," 43 Stat. 535; the American War Mothers is "hereby incorporated and declared to be a body corporate," 43 Stat. 966, 967; the Textile Foundation is "hereby created a body corporate," 46 Stat. 539; the Disabled American Veterans of the World War are "hereby created and declared to be a body corporate," 47 Stat. 320; each Federal Home Loan Bank shall become "a body corporate," 47 Stat. 725, 735; "there is hereby created a body corporate by the name of the 'Tennessee Valley Authority,'" 48 Stat. 58, 60; "there is hereby created the Cairo Bridge Commission, and by that name, style, and title said body shall have perpetual succession," 48 Stat. 577, 581; the Port Arthur Bridge Commission shall "have perpetual succession as a corporation," 48 Stat. 1008, 1009; the Federal Credit Union "shall have succession in its corporate name," 48 Stat. 1216, 1218; each National Mortgage Association "shall have succession" and power "to adopt and use a corporate seal," 48 Stat. 1246, 1253; the American National Theater and Academy is "hereby incorporated, constituted, and declared to be a body corporate," 49 Stat. 457, 458; the Marine Corps League is "hereby

corporation;" and does not restrict its language to giving a certain official mere authority to sue and be sued.[42]

Neither in creating the office of the Federal Housing Administrator (or the Administration) nor in the

created a body corporate," 50 Stat. 558; "the name of the corporation shall be 'Southeastern University,'" 50 Stat. 697, 698. "There is hereby created . * * * a body corporate * * * to be known as the United States Housing Authority," 50 Stat. 888, 889, 890.

[41] For instances, Foreign Banking Corporations, 41 Stat. 378, 379; China Trade Act Corporation, 42 Stat. 849, 851; National Agricultural Credit Corporations, 42 Stat. 1454, 1461; Inland Waterways Corporation, 43 Stat. 360, 362; Reconstruction Finance Corporation, 47 Stat. 5; Regional Agricultural Credit Corporations, 47 Stat. 709, 713; Corporation of Foreign Security Holders, 48 Stat. 92, 93; Federal Deposit Insurance Corporation, 48 Stat. 162, 168; Production Credit Corporations, 48 Stat. 257; Federal Farm Mortgage Corporations, 48 Stat. 344; Federal Savings & Loan Insurance Corporation, 48 Stat. 1246, 1256; Disaster Loan Corporation, 50 Stat. 19; Farmers' Home Corporation, 50 Stat. 527; Federal Crop Insurance Corporation, 52 Stat. 31, 72, 73.

[42] Section 60 of the Farm Credit Act of 1933, c. 98, 48 Stat. 257, 266, is fairly typical. It provides in part that "The Central Bank for Cooperatives, and the Production Credit Corporations, the Production Credit Associations, and the Banks for Cooperatives, organized under this Act, shall have succession, until dissolved in accordance with this or any other Act of Congress; shall have power to sue and be sued in any court; to adopt and use a corporate seal; to make contracts; to acquire, hold, and dispose of real and personal property necessary and incident to the conduct of their business; to prescribe fees and charges (which in any case shall be subject to the rules and regulations prescribed by the governor) for loans and other services; and shall have such other powers necessary and incident to carrying out their powers and duties under this or any other Act of Congress as may be provided by the governor in their charters or in any amendments thereto. Each such bank, association, or corporation shall, for the purposes of jurisdiction, be deemed a citizen of the State or District within which its principal office is located. * * *"

amendment of August 23, 1935, did Congress entitle either a corporation, declare either to be a body corporate, grant either the usual powers of a corporation, give either perpetual succession, or provide for capital stock. It did not empower either to adopt and use a corporate seal,[43] or make either a citizen of the State or District where principal offices were located for purposes of jurisdiction. Nor is the Federal Housing Administration designed for purposes of profit to the Government.

It is significant, moreover, that in the National Housing Act of June 27, 1934, in which Congress created the Federal Housing Administration, it also created the Federal Savings and Loan Insurance Corporation, c. 847, 48 Stat. 1246, 1256, and in so doing it followed its general practice, providing in Section 402 that—

> (a) There is hereby created a Federal Savings and Loan Insurance Corporation (hereinafter referred to as "Corporation"), which shall insure. * * *
>
> (b) The Corporation shall have a capital stock of $100,000,000. * * *
>
> (c) * * * the Corporation shall become a body corporate, and shall be an instrumentality of the United States, and as such shall have power—
>
> (1) To adopt and use a corporate seal.
>
> (2) To have succession until dissolved by Act of Congress. * * *

[43] The Federal Housing Administration, however, has a seal as a governmental agency, as authorized by Executive Order No. 7058 of May 29, 1935.

No such provision, relative to the Federal Housing Administrator or Administration, is in the Act. Similar corporate status is provided in clear and certain terms by Section 301 of the National Housing Act for national mortgage associations, but they are not made "an instrumentality of the United States" nor are their powers conferred on them "as such."

The Federal Savings and Loan Insurance Corporation and the national mortgage associations, without limiting language are empowered "to sue and be sued, complain and defend, in any court of law or equity, State or Federal" (Sec. 301 (c) (3); Sec. 402 (c) (4)). In the case of the Federal Savings and Loan Insurance Corporation the grant of power to sue and be sued "as such" (as "an instrumentality of the United States") may indicate an intention to limit the effect of the power.

Except for the "sue-and-be-sued" clause added by the amendment of August 23, 1935," here involved, there is nothing in the National Housing Act suggesting that the Federal Housing Administrator or the Administration is a corporation or is in any wise assimilated thereto, except possibly also Section 512 (c) of Title V of the Act, which in providing penalties, makes reference to "intent to defraud the Administration or the Cor-

" The relevant legislative records do not offer light on this provision of the Banking Act of 1935. The Senate Report (No. 1007) on H. R. 7617, 74th Congress, 1st Session, S. N. 9880, p. 24) merely states that purpose of the amendment is to be "clarifying." The House Report confines itself to a mere statement of the substance of the provision (H. Rept. No. 1822 on H. R. 7617, 74th Congress, 1st Session, p. 57, S. N. 9889).

poration [Federal Savings and Loan Insurance Corporation] or any other body, politic or corporate, or any individual" language unconvincing in view of the joint reference.

F. THE ADMINISTRATOR'S AUTHORITY TO BE SUED EXTENDS ONLY TO TRANSACTIONS IN CARRYING OUT THE ACT AND NOT TO PROCEEDINGS BASED ON CLAIMS AGAINST THIRD PERSONS

As shown, the jurisdiction of the courts below depends strictly on whether the United States has consented to the action, and it is settled that suit against the United States can be maintained only in the manner and subject to the restrictions prescribed by the consenting statute. *Munro v. United States*, 303 U. S. 36, 41. Similarly, it has been uniformly held that a statute dealing with the relaxation of sovereign immunity from suit must be strictly construed.[45] Only, as in the *Keifer* case, where faced with a general background of federal legislation and national policy indicating hostility to the immunity, has the Court found waiver of immunity elsewhere than in plain statutory words. The traditional view of the Court is that the liability of the Government to suit should not be enlarged beyond what the statutory language requires;[46] that the letter of such consent is its limit—"no matter how beneficial they [the courts] may deem or in fact might be their possession of a larger jurisdiction over liabilities

[45] *United States* v. *Michel*, 282 U. S. 656; *Eastern Transportation Co.* v. *United States*, 272 U. S. 675; *Price* v. *United States*, 174 U. S. 373; *Schillinger* v. *United States*, 155 U. S. 163.

[46] *Eastern Transportation Co.* v. *United States*, 272 U. S. 675, 686.

of the Government." [47] The recent view, less strict, in the *Keifer* case, met an asserted immunity amounting to "legal irresponsibility," an irresponsibility not involved in the immunity here asserted.

Hence the consent to garnishment proceedings must be found, if at all, in Section 1 of the National Housing Act, as amended, which provides:

> The Administrator shall, in carrying out the provisions of this title [Title I] and Titles II and III be authorized, in his official capacity, to sue and be sued in any court of competent jurisdiction, State or federal.

The phrase "in carrying out the provisions of this title and Titles II and III" [48] clearly indicates a purpose to exclude cases unrelated to the Administrator's own duties or liabilities. The Administrator, it is submitted, is suable under the statutory consent only where the plaintiff is a party to a transaction with him related to carrying out the provisions of those titles. Hence the consent does not include garnishment proceedings or other derivative actions based on claims against third persons, even though the garnished claim is one owing

[47] *Schillinger v. United States*, 155 U. S. 163, 166.

[48] Title I deals with Housing Renovation and Modernization; Title II with Mortgage Insurance; Title III with National Mortgage Associations; Title IV with Insurance of Savings and Loan Accounts; Title V with Miscellaneous (amendments of the Federal Home Loan Bank Act, the Farm Credit Act of 1933, the Federal Reserve Act, the Home Owners' Loan Act of 1933, the Act entitled "An Act relating to contracts and agreements under the Agricultural Adjustment Act" approved January 25, 1934, and the Interstate Commerce Act; and providing penalties for offenses against the Administration or the Federal Savings and Loan Insurance Corporation). Titles IV and V contain no provision to be carried out by the Administrator.

to the principal debtor by reason of transactions, such as employment, in carrying out the provisions of those titles.

In *Sloan Shipyards* v. *Fleet Corporation*, 258 U. S. 549, the Court had held that the Shipping Board was originally subject to unrestricted suit by reason of its incorporation under the laws of the District of Columbia, and that the subsequent bestowal on it of governmental powers did not give it immunity from suit generally, whether in contract or tort. In *McCarthy* v. *United States Shipping Board Merchant Fleet Corporation*, 53 F. (2d) 923 (App. D. C.), certiorari denied, 285 U. S. 547, the Shipping Board was nevertheless held immune to garnishment proceedings. A sharp distinction was drawn between suits "upon its obligations" and "attachment or garnishment in cases unrelated to its own duties or liabilities" (53 F. (2d) 923 at 923–924). The consent to be sued in Section 1 of the National Housing Act, as amended, is no broader than the suability of the Shipping Board as determined in the *Sloan* case.

Although in *Federal Land Bank* v. *Priddy*, 295 U. S. 229, the Court held a Federal Land Bank, a governmental corporation, subject to seizure of its property by way of attachment and execution to satisfy a liability to its own creditor in an action, authorized by statute, against the Bank, the Court has never held the Government, or its instrumentalities or corporations, subject to garnishment to satisfy the claim of one not its own creditor who happened to be a creditor of the Government's obligee. Moreover, it would seem from the Court's reasoning in

the *Priddy* case that mere liability to suit, without further indicia of Congressional intent, does not imply liability to attachment or execution. And the indicia of Congressional intent relied on to sustain the right of attachment and execution against the Federal Land Bank in the *Priddy* case [49] are missing in the case of the Federal Housing Administrator. Hence it is doubtful, at least, whether attachment or execution would lie to satisfy even a direct claim against the Administrator. Even more must be shown to support garnishment, a derivative action by a stranger to the Government's transaction.[50]

Moreover, in the *Priddy* case the Court expressly reserved the question whether a different result would be required if it were shown that the attachment would directly interfere with any function performed as a federal instrumentality. The interference which would result here, and reasons of policy and practical consid-

[49] Private business characteristics of the Federal Land Bank: its stock not contemplated to be even chiefly government owned; operations in part at least for profit; legislative treatment similar to that accorded joint stock land banks; use of qualifying phrase "as fully as natural persons" in prescribing liability to suit; specific grant of immunity from taxation. (Cf. sec. 208 of the National Housing Act disclaiming exemption from taxation of real property acquired and held by the Administrator; but cf. sec. 204 (d) providing exemption of debentures issued by Administrator. Similar disclaimer and similar exemptions are included in secs. 307 and 402 (e) as to National Mortgage Associations and Federal Saving and Loan Insurance Corporation.)

[50] And if the derivative action is maintainable, still more need be shown to warrant execution to satisfy that derivative judgment. The judgments below complained of allow execution for their satisfaction (R. 11; R. 15). This matter of execution is discussed in greater length, *infra*, pp. 51–52.

erations weighing against an implication of consent to garnishment here, have been set forth (supra, pp. 19–33).

The legislative history of the Banking Act of 1935, which added the consent provision to the National Housing Act, contains no indication of an intention to give that provision a broader implication than its words express.[51]

So far as we are aware, the only legislation expressly authorizing garnishment proceedings against a Government officer or agency is Section 30 of the Trading with the Enemy Act, c. 167, 45 Stat. 254, 275, and the reason for that exceptional provision is to prevent the custodian from impairing the rights of third persons against seized property. This jealous restraint indicates in the garnishment area a far different "climate of opinion" than in the suability area, where Congress has been contrastingly liberal in granting consent to be sued. In the *Keifer* case the Court found (306 U. S. at 390–391) forty instances where Congress had authorized Government agencies to sue and be sued, and only two instances where such authority was not ex-

[51] The report of the Senate Committee on Banking and Currency which reported out the measure (S. Report No. 1007, 74th Congress, 1st Session, May 13, 1935, to accompany H. R. 7617, at p. 24) limits its comments as to that, and other provisions, to the following sentence: "Section 343, which was not included in the House bill, makes several minor clarifying amendments to the provisions of the National Housing Act *relating to suits brought under such act*, the insurance of loans for financing alterations, repairs, and improvements on real property, and mortgage insurance." (Emphasis supplied.) It could scarcely be contended that a garnishment proceeding to satisfy a claim against an employee of the Administration is a suit brought under the National Housing Act.

plicity conferred (*ibid*, p. 392). In any event there is no general historical background of legislation or national policy (such as there was in the *Keifer* case) from which it can be assumed that Congress intended to consent to garnishment by consenting to suits against the Administrator with respect to his functions under the Act.

Moreover the consent provision here in question was enacted against the background of federal judicial decisions barring garnishment against the United States and even its suable instrumentalities (*Buchanan* v. *Alexander*, 4 How. 20; *McCarthy* v. *United States Shipping Board Merchant Fleet Corporation*, 53 F. (2d) 923 (App. D. C.), certiorari denied, 285 U. S. 547), and should be construed in the light of those decisions. The prevailing view of state courts, at the time of the enactment of the "sue-and-be-sued" clause (and since unchanged) was likewise that in the case of public bodies authority to be sued is not authority for garnishment.[52] Abrogation of the rule judicially enunciated should require an explicit statute.

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[52] *Central of Georgia Ry.* v. *City of Andalusia*, 218 Ala. 511; *Mayor and City Council of Baltimore, Garnishee* v. *Root*, 8 Md. 95, 106; *State of Washington ex rel. Summerfield* v. *Tyler*, 14 Wash. 495; 498; *Duval County* v. *The Charleston Lumber Co.*, 45 Fla. 256, 265; *Skelly* v. *Westminster School District*, 103 Calif. 652, 659. *Cf. Dickens* v. *Bransford Realty Co.*, 141 Tenn. 387, 391; *City of Chicago* v. *Hasley*, 25 Ill. 595. But cf. *Packard Phoenix Motor Co.* v. *American LaFrance Corp.*, 37 Ariz. 35, 42 (charter authorizing municipality to "sue and be sued * * * in all actions and proceedings whatsoever"). Contra: *Rodman* v. *Musselman*, 75 Ky. 354, 356; *Waterbury* v. *Commissioner*, 10 Mont. 515, 520.

There is no more basis in the suability provisions of the National Housing Act, as amended, for garnishment against the Administrator than there is in the Tucker Act, c. 359, 24 Stat. 505, for garnishment against the United States. If the Administrator is garnishable merely because suable, as held below, by a parity of reasoning the United States would be garnishable, where the claim against the United States sought to be garnished was one that could be the subject of suit against the United States under the Tucker Act. Since its enactment in 1887, we know of no case where the Tucker Act has been utilized as a basis of garnishment against the United States.

III

THE JUDGMENTS BELOW IMPROPERLY ALLOW EXECUTION

Execution is allowed under the judgments both of the trial court (R. 11) and of the court below (R. 15), and the execution allowed in this case is not limited to funds owing to the employee and available for payment to him.[18]

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[18] The judgment of the trial court is that the "plaintiff do recover against the said garnishee defendant the *amount* of his indebtedness to the principal defendant and that plaintiff have execution therefor" (emphasis supplied) (R. 11). The judgment of affirmance provides "that the appellee do recover of the appellant, his costs, to be taxed, and that he have execution therefor" (R. 15). The applicable Michigan statute provides: * * * "when the garnishee shall be adjudged liable as such except when it is otherwise specially provided, judgment shall be rendered and execution issue against such garnishee, *his own goods and estate*, for the *amount* of the judgment and costs against the principal defendant, if the garnishee's liability shall be for so much, otherwise for the *amount* thereof." (Emphasis supplied.) (Mich. Comp. Laws (1929), sec. 14,887; Mich. Stats. Ann. (1938), sec. 27, 1885).

The practical interference with the functions of the Administrator when execution is attempted not merely out of funds available for paying the claim owing to the principal debtor but against other property of the United States is effectively illustrated by the proceedings in *United States* v. *Winkle Terra Cotta, Inc.*, No. 11,547 pending on appeal before the United States Circuit Court of Appeals for the Eighth Circuit, the facts of which are set forth *supra*, pp. 20–21.[34] Here as there, the state court did not attach any specific credit or thing owing to the employee, but undertook to award a judgment *in personam* against the Administration. Obviously the judgment cannot properly be enforced against other Federal Housing Administration property and credits belonging to the United States.

Conceivably the Government might consent to subject its property to execution proceedings to satisfy judgments against it (cf. *Federal Land Bank* v. *Priddy*, 295 U. S. 229, 234, 237). But that Congress has not so consented here seems plain. The administrative branch of the Government cannot and does not pay any judgment until money has been appropriated for that purpose by Congress, to which all final judgments against the United States are reported (c. 1630, 33 Stat. 394, 422, 31 U. S. C. 583 (2), *Reeside* v. *Walker*, 11 How. 272, 291; *Cincinnati Soap Co.* v. *United States*, 301 U. S. 308, 321). It is difficult to attribute to Congress an intention to permit satisfaction of garnish-

[34] See also matter included in the Appendix, *infra*, pp. 72–75.

ment judgments out of money, or property acquired with money, appropriated for other purposes.

CONCLUSION

The immunity here asserted is well supported in settled principles, reasons of policy and practical considerations. There is no occasion in this case to construe the authority to be sued as extending to garnishment. It is therefore respectfully submitted that the judgment of the Supreme Court of Michigan should be reversed.

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DECEMBER 1939.

APPENDIX

SECTION 1 OF TITLE I OF THE NATIONAL HOUSING ACT (ACT OF JUNE 27, 1934, C. 847, 48 STAT. 1246)

CREATION OF FEDERAL HOUSING ADMINISTRATION

SECTION 1. The President is authorized to create a Federal Housing Administration, all of the powers of which shall be exercised by a Federal Housing Administrator (hereinafter referred to as the "Administrator"), who shall be appointed by the President, by and with the advice and consent of the Senate, shall hold office for a term of four years, and shall receive compensation at the rate of $10,000 per annum. In order to carry out the provisions of this title and titles II and III, the Administrator may establish such agencies, accept and utilize such voluntary and uncompensated services, utilize such Federal officers and employees, and, with the consent of the State, such State and local officers and employees, and appoint such other officers and employees as he may find necessary, and may prescribe their authorities, duties, responsibilities, and tenure, and fix their compensation, without regard to the provisions of other laws applicable to the employment or compensation of officers or employees of the United States. The Administrator may delegate any of the functions and powers conferred upon him under this title and titles II and III to such officers, agents, and employees as he may designate or appoint, and may make such expenditures (including expenditures for personal services and rent at the seat of government and elsewhere, for lawbooks and books of reference,

and for paper, printing, and binding) as are necessary to carry out the provisions of this title and titles II and III, without regard to any other provisions of law governing the expenditure of public funds. All such compensation, expenses, and allowances shall be paid out of funds made available by this Act.

SECTION 344 (A) OF THE BANKING ACT OF 1935 (ACT OF AUGUST 23, 1935, C. 614, 49 STAT. 684, 722)

SEC. 344. (a) Section 1 of the National Housing Act is amended by adding at the end thereof the following new sentence: "The Administrator shall, in carrying out the provisions of this title and titles II and III, be authorized, in his official capacity, to sue and be sued in any court of competent jurisdiction, State or Federal."

EXCERPTS FROM FIRST ANNUAL REPORT OF THE FEDERAL HOUSING ADMINISTRATION (HOUSE DOCUMENT NO. 88, 74TH CONGRESS, 1ST SESSION).

Pages 4–5:

SUMMARY OF PRINCIPAL FUNCTIONS

The activities of the Federal Housing Administration are centered on the bringing of private capital to an enlarged and more fruitful use in real property. Its prescribed functions may be outlined briefly under three headings, corresponding respectively to titles I, II, and III of the National Housing Act.

I. CHARACTER LOANS FOR MODERNIZING REAL PROPERTY

To encourage the immediate modernization, repair, and improvement of homes and other small properties, it is provided that any advances of credit or loans made

for this purpose may be insured by the Federal Housing Administration against losses up to 20 percent of the total amount of such advances made by any bank or other approved financial institution. These loans are based primarily on the individual property owner's character and ability to repay.

II. INSURED MORTGAGE LOANS

A system of mutual mortgage insurance is provided as a means of instituting a thorough reform in the home financing structure, and to assure the release of credit required for the impending revival in home-building activity; hence, like the modernization credit plan, it becomes a vital element in the whole recovery program of the Federal Government. Mortgages, in order to be eligible for insurance, must conform to certain conditions set forth in the Act and in regulations prescribed by the Administrator. These conditions aim to develop practices that protect the borrowers against excessive charges, and in operation will discourage the assumption of obligations above the borrower's reasonable capacity to pay. They provide for complete retirement of the mortgage by means of small amortization payments at frequent intervals.

The resulting pooling of risks is designed to assure lower charges to borrowers as a group, safeguard the funds of lending institutions acting on behalf of millions of small savers, and provide a more stable and secure source of home mortgage credit, especially for loans up to a higher percentage of the appraised value than those now commonly available from institutions lending on first mortgages.

III. NATIONAL MORTGAGE ASSOCIATIONS

National mortgage associations, organized with private capital, are authorized to be established in order

to develop a market for insured mortgages. Thus, insured mortgages will become more desirable to certain types of institutions.

These associations should aid in the flow of capital for home financing from areas with surplus funds seeking safe, long-term investment, to areas where such funds are not adequate to meet local home financing needs.

Pages 22–24:

PERSONNEL

Section 1 of the National Housing Act exempted the Federal Housing Administration from the provisions of the classified civil service. All appointments of the employees in the District of Columbia and the field were made in accordance with the provisions of Executive Order No. 6746, dated June 21, 1934, and from eligible registers of applicants developed by the personnel office on a basis of their fitness for the particular positions involved.

Employees selected to assist in the administration of the mutual mortgage insurance plan were required to have years of experience in amortized mortgage procedure. Those chosen for the position of valuator, or appraiser, not only had to prove 10 years of experience in their field, but were also given a special training in a school conducted by the Administration.

As far as possible the initial appointments were made in accordance with the grades and salaries of the Classification Act of 1923 and were apportioned among the several States in accordance with the spirit of the Apportionment Act, which provided that appointments in the Government service should be on the same ratio as the population of the respective States. Owing to the urgency of the work, the classification of employees as to grade and salary was made on a tentative basis.

In cooperation with the Civil Service Commission, a classification survey is being made of all positions. As rapidly as the survey is completed for any group or class of positions, the employees in these groups are immediately classified in strict accordance with the Classification Act. In case an employee or group of employees feel that the classification of his or their position as determined by the Federal Housing Administration has done him or them an injustice, arrangements have been made with the Civil Service Commission to consider the appeal of such cases and the Federal Housing Administration will abide by the findings of the Civil Service Commission insofar as they relate to the grade in pay of a particular position or group of positions. As soon as the survey is completed for the employees in the District of Columbia, the survey will be extended to the field. All of the employees of the Federal Housing Administration are expected to be fully classified by or before June 30, 1935.

The fact that 110,000 applications for positions have been received materially increased the cost of selecting the proper personnel.

Page 25:

Although section 1 of the act authorized the Administrator to make the expenditures without regard to other provisions of the law governing the expenditure of public funds, it was decided as a matter of policy to conform as nearly as possible to the established procedure governing the expenditure of public funds.

The Comptroller General of the United States has cooperated to establish the necessary accounting system and procedure and to preaudit all vouchers paid on account of salary and expenses. The services of the Chief Disbursing Officer of the United States have been utilized in making the disbursements.

EXCERPTS FROM FIFTH ANNUAL REPORT OF THE FEDERAL HOUSING ADMINISTRATION (HOUSE DOCUMENT NO. 273, 76TH CONGRESS, 1ST SESSION)

Page 157:

The accounts and records of the Federal Housing Administration have been established and maintained at all times in accordance with governmental procedure, adapted to the requirements of the National Housing Act, and are centrally maintained in Washington, D. C. All funds are deposited with the Treasurer of the United States and payments of expenses and other obligations are made through the Chief Disbursing Officer of the Treasury Department.

RECEIPTS, DISBURSEMENTS, AND APPROPRIATIONS

Receipts of the Federal Housing Administration are received principally in the forms of (a) allocations from the Reconstruction Finance Corporation, (b) collections of appraisal fees and insurance premiums under title II, (c) rents and sales proceeds of properties acquired after defaults under title II, (d) recoveries under defaulted title I notes, (e) interest on investments, and (f) miscellaneous receipts.

Disbursements by this Administration are made principally for (a) salaries and expenses, (b) furniture and equipment, (c) property management, (d) cash settlements of title I claims, (e) purchases of debentures of this Administration, (f) investments, and (g) miscellaneous purposes.

Estimates for annual salaries and general expenses of operating this Administration are regularly submitted to Congress in cooperation with the Director of the Budget. The annual budget is partly met by outright appropriation by the Congress through allocations from the Reconstruction Finance Corporation (in accordance

with the provisions of sec. 4 of the National Housing Act) while the remainder is made available from the mortgage insurance funds.

During the fiscal year 1938 the $9,400,000 appropriation was met by a $4,400,000 allocation by the Reconstruction Finance Corporation and a $5,000,000 transfer from the mutual mortgage insurance fund. During the current fiscal year the $8,500,000 appropriation is being met by $5,000,000 from the fund, and $3,500,000 from the Reconstruction Finance Corporation. No allocation for operating expenses has yet been made from the Housing Insurance Fund, which was established under the 1938 amendments. (The general authority for charging operation expenses to the funds is contained in sec. 205 (b) and 207 (f) of the National Housing Act. The specific authorizations for such charges are contained in the Independent Offices Appropriation Acts of 1938 and 1939 and are based upon decisions of the Administrator as approved by the Director of the Budget.)

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TITLE II. MUTUAL MORTGAGE INSURANCE ACCOUNTS

Insurance contracts on small home mortgages executed in the field under section 203 of the act are reviewed in Washington for the purposes of determining their compliance with the rules and regulations and establishing proper insurance accounts and records.

Each collection remitted by the lending institution to the Federal Housing Administration is identified with its individual mortgage record, verified and deposited with the Treasurer of the United States to the credit of the mutual mortgage insurance fund.

The receipts from insurance premiums and fees from rental housing projects insured under section 207 prior

to the amendments to the National Housing Act of February 3, 1938, are deposited in the mutual mortgage insurance fund.

In accordance with the provisions of the above amendments a separate housing insurance fund was established on February 3, 1938 (see p. 173), to which receipts from all new housing projects insured under sections 207 and 210 are being credited.

Page 167:

In accordance with arrangements made between the Federal Housing Administrator and the Secretary of the Treasury, the Division of Loans and Currency of the Treasury Department issues debentures upon the acquisition of property by the Administrator, paying interest thereon and redeeming the debentures upon request of the Administrator and the approval of the Secretary of the Treasury. In this way the debentures are recorded and handled in the same manner as obligations of the United States, and the Federal Housing Administration has the additional advantage of an interdepartmental check and control over the debentures.

Page 169:

As funds are deposited in the Treasury and as cash accumulates in excess of the needs of the Federal Housing Administration, the Secretary of the Treasury, upon request of the Administrator, invests such cash in obligations of the United States or those guaranteed by the United States.

Page 174:

ADMINISTRATIVE ACCOUNTS

All expense and other vouchers of the Federal Housing Administration are administratively audited and

approved in the Washington office. Those which are regular in nature, such as purchase vouchers under general contracts, ordinary travel expense vouchers, etc., are sent directly to the Chief Disbursing Officer of the Treasury Department for payment. Vouchers which are unusual or on which there have not been established well-defined precedents are forwarded to the Comptroller General of the United States for pre-audit. There is no undue accumulation of unpaid accounts on hand.

LETTER DATED JULY 11, 1936, FROM THE ACTING COMPTROLLER GENERAL OF THE UNITED STATES TO THE ADMINISTRATOR, FEDERAL HOUSING ADMINISTRATION

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, July 11, 1936.

A-51615

THE ADMINISTRATOR,
Federal Housing Administration.

SIR:

In effectuating the accounting requirements of the Federal Housing Administration which have for some time past been the subject of cooperative study by representatives of this office and officials of the Federal Housing Administration, there is hereby prescribed, pursuant to section 309 of the Budget and Accounting Act, 1921, a system of administrative accounts which follows generally the uniform accounting system and which it is believed will meet the needs of the Administration. The following general-ledger accounts will be maintained on Standard Form No. 1014 (General Ledger):

Debit Balance Accounts

01. Treasury Cash (by symbols and titles)
03.31 Disbursing Officer's Cash — Disbursing Funds (by symbols and titles)
03.32 Disbursing Officer's Cash—Receipts and Repayments (by symbols and titles)
03.37 Disbursing Officer's Cash—Special Deposits
07. Retirement and Disability Funds
08.1 Investments (by classes)
08.11 Accrued Interest Receivable on Investments (by classes)
08.111 Premium on Bonds Purchased (by classes)
08.112 Discount on Bonds Purchased (by classes)
08.2 Debentures Repurchased
09.1 Loans Receivable (by classes)
10.1 Accounts Receivable
10.2 Rents Receivable (by group accounts)
20. Stores
30. Fixed Property (by group accounts)
33. Equipment
39. Undistributed Expenditures
40.1 Current Costs—Administration
40.2 Current Costs—Title I Loans
40.3 Current Costs—Redemption of Debentures and Certificates of Claim (by group accounts)
40.4 Current Costs — Interest Expense (by group accounts)
40.5 Current Costs—Real Estate Maintenance Expense (by group accounts)
40.6 Current Costs—Miscellaneous Real Estate Expense (by group accounts)

Credit Balance Accounts

64.1 Retirement Contributions—Civil Service Form 2806

64.11 Retirement Contributions—Pay Card

66. Unapplied Special Deposit Collections

68.1 Debentures Payable (by group accounts)

68.11 Accrued Interest Payable on Debentures (by group accounts)

68.2 Certificates of Claim Payable (by group accounts)

68.21 Accrued Interest Payable on Certificates of Claim (by group accounts)

68.3 Accounts Payable—Excess Profits Due Mortgagors (by group accounts)

70. General Fund Receipts (by symbols and titles)

71.1 Income—Interest on Investments (by classes)

71.2 Income on Real Estate (by group accounts)

71.3 Income—Insurance Premiums and Appraisal Fees (by group accounts)

80. Invested and Donated Capital

90.1 Unallotted Appropriations (by symbols and titles)

90.11 Unexpended Allocations—Mutual Mortgage Insurance Fund (by group accounts)

90.2 Unencumbered Allotments

90.3 Unliquidated Encumbrances

90.4 Expended Appropriations

90.5 Expended Allocations—Mutual Mortgage Insurance Fund (by group accounts)

90.51 Repayments—Mutual Mortgage Insurance Fund (by group accounts)

It is further contemplated that allotment ledger accounts will be maintained on Standard Form No. 1015 (Allotment Ledger).

For the information and guidance of those directly responsible for the operation of the system there are attached: (1) Chart of General Ledger Accounts (Exhibit A); (2) Pro Forma Journal Entries to General Ledger Accounts (Exhibit B); and (3) Description and Operation of Allotment Ledger (Exhibit C).

From the accounting records herein provided there should be prepared at the close of each month, in form as per attached exhibits, the following statements:

(1) Statement of Balances—Central Ledger Accounts

(2) Schedule of Balances Showing Status of Appropriations

(3) Statement of Allotment Accounts

Copies of the above statements, together with transcripts of the general ledger accounts "01. Treasury Cash (by symbols and titles)," should be forwarded to the Accounting and Bookkeeping Division, General Accounting Office, as soon as possible after the close of each month, upon receipt of which the appropriation balances shown therein will be checked against the records of this office and a reconciliation statement furnished the Administration.

Should experience demonstrate the desirability for changes in the accounts and procedure herein prescribed, prior approval thereof by this office should be obtained.

The cooperation of officials of the Federal Housing Administration is appreciated.

Respectfully,

R. N. ELLIOTT,
Acting Comptroller General of the United States.

Inclosures

Letter Dated January 23, 1936, From the Comptroller General of the United States to the Administrator, Federal Housing Administration

Comptroller General of the United States,
Washington, January 23, 1936.

A–51615

Administrator,
Federal Housing Administration.

Sir: There was received by your direction the letter of your Comptroller, dated October 19, 1935, as follows:

> In connection with the administration of the National Housing Act, the Federal Housing Administration receives the following collections:
>
> *Collections—Insured Losses (Title I, Act of June 27, 1934).*—These receipts are the results of the collection efforts of the Federal Housing Administration to recover on the notes receivable and collateral assigned to the Federal Housing Administration as the results of the insured losses paid financial institutions under the provisions of Title I, Section 3 of the Act, *supra.* It is recommended that this be covered in the Treasury as a miscellaneous receipt under the caption suggested.
>
> *Collections on Loans to Financial Institutions.*—These collections are repayments on the advances made under the provisions of Title I, Section 3 of the Act, to financial institutions secured by insured modernization loans. In view of the fact that these are real loans which are fully secured, etc., and not ordinary expenditures or sales of Government property, it is recommended that these funds be handled as a repayment to OX–681, Renovation and Modernization Loans and Insurance.
>
> *Interest on Loans to Financial Institutions.*—These collections are in payment of interest to the Federal Housing Administration on account of loans made under the provisions of Section 3

of the Act. It is recommended that they be covered in the Treasury as miscellaneous receipts.

Premiums, Mutual Mortgage Insurance.—These are trust funds received from the mortgagees as a part of their contribution to the Mutual Mortgage Insurance Fund on account of insured mortgages. The premiums are paid annually in advance. It is recommended that they be covered in the Treasury as trust funds for the account of the Mutual Mortgage Insurance Fund.

Appraisal Fees, Mutual Mortgage Insurance.—These are collections from the mortgagees to partially reimburse the Government for the cost of appraising the property offered as security for insured mortgages. It is recommended that these collections be covered in the Treasury as miscellaneous receipts.

Interest on Investments, Mutual Mortgage Insurance Fund.—These are trust fund receipts on the investments of the Mutual Mortgage Insurance Fund. It is recommended that they be covered in the Treasury as trust funds for the account of the Mutual Mortgage Insurance Fund.

Your decision as to the proper receipt symbols and titles and instructions as to the disposition of these funds are requested. The foregoing receipt titles are suggested for your consideration in assigning symbols and titles. As received, the collections are deposited as "Special Deposits" with the Chief Disbursing Officer of the United States.

In the absence of any provision in Title I of the act of June 27, 1934, 48 Stat. 1246, to the contrary, all receipts in connection with the operations under said title are for covering into the Treasury as miscellaneous receipts. Accordingly, the following receipt symbols and titles have been set up on the books of the Government, and such collections now in the hands of disbursing

officers should be immediately covered into the Treasury to the credit of the appropriate account:

7051 Collections—Insured Losses (Title I, Act of June 27, 1934)
7052 Collection of Loans to Financial Institutions
7053 Interest on Loans to Financial Institutions

Section 202 of said National Housing Act of June 27, 1934, 48 Stat. 1248, provides:

> There is hereby created a Mutual Mortgage Insurance Fund (hereinafter referred to as the "Fund"), which shall be used by the Administrator as a revolving fund for carrying out the provisions of this title as hereinafter provided, and there shall be allocated immediately to such Fund the sum of $10,000,000 out of funds made available to the Administrator for the purposes of this title.

In view of this provision for a revolving fund to carry out the provisions of this title, any collections made in connection with the carrying out of said provision—and with respect to which the act does not provide for other disposition—are properly for credit to the said revolving fund. Accordingly, collections received, such as premiums, appraisal fees, and interest on investments, will be deposited to the credit of said revolving fund, and the title of the account now appearing on the books of the Government under the caption "08353 Mutual Mortgage Insurance Fund, Federal Housing Administration, S. F." has been changed to "08353 Mutual Mortgage Insurance Fund, Federal Housing Administration, Revolving Fund."

The funds heretofore deposited to the credit of the receipt account "8146 Interest Earned on Investments, Mutual Mortgage Insurance Fund, Federal Housing Administration" and appropriated to account "OT355 Mutual Mortgage Insurance, Earned Interest Fund,

Federal Housing Administration. Trust Fund" will be transferred to the revolving fund by transfer appropriation warrant, and the use of the two accounts for recording interest collections will be discontinued.

Respectfully,

J. R. McCarl,
Comptroller General of the United States.

GENERAL ORDER NO. 2, FEDERAL HOUSING ADMINISTRATION, AS REVISED MAY 7, 1937

FEDERAL HOUSING ADMINISTRATION
WASHINGTON, D. C.

GENERAL ORDER NO. 2 REVISED

To the Heads of all Divisions and Offices:

Subject: Authority and Procedure for Expenditures.

General Order No. 2, revised dated August 6, 1934, is hereby cancelled and the following substituted therefor:

I. GENERAL AUTHORITY AND POLICY

Section 1 of the National Housing Act provides:

> * * * The Administrator may delegate any of the functions and powers conferred upon him under this title and titles II and III to such officers, agents, and employees as he may designate or appoint, and may make such expenditures (including expenditures for personal services and rent at the seat of government and elsewhere, for law books and books of reference, and for paper, printing, and binding) as are necessary to carry out the provisions of this title and titles II and III, without regard to any other provisions of law governing the expenditure of public funds. All such compensation, expenses, and allowances shall be paid out of funds made available by this Act.

Although the provisions of the law, supra, provide great latitude regarding the expenditures made on account of the Federal Housing Administration, it is ordered that in the incurring of obligations and the payment of expenditures that the established government procedures be followed so far as practicable in each instance.

II. PROCEDURE

To provide an orderly procedure for the procurement and distribution of supplies, it is ordered that:

1. The Heads of the Divisions, or such officials as may be designated by them, shall requisition all supplies, printing and binding equipment, etc. (whether desired by purchase, loan or on consignment) through the Purchase and Property Officer. The Purchase and Property Officer upon receipt of these supplies and/or materials delivered as above will obtain proper receipts, which will be retained by him as a record of the delivery.

2. Every purchase involving an expenditure in excess of $100 shall be made after advertising for bids in accordance with the provisions of Section 3709 of the Revised Statutes, except:

a. Where the exigency of the service requires the immediate delivery of the articles that will not admit of the delay incident to advertising;

b. Where there is only one source of supply; and

c. Where for any other reason it is impracticable to secure competition.

3. Bids shall be awarded to the bidder offering the lowest price on articles meeting the advertised specifications unless there exists a satisfactory reason for rejection which must be fully explained. After award is made a formal contract will be entered into if the amount involved is over $1,000. Where the amount involved is less than $1,000 no formal contract need be executed.

4. When it is deemed necessary to make an emergency purchase involving an expenditure in excess of $100 without competition bidding under the provisions of Paragraph 2a above, the matter shall be submitted to the Executive Assistant or Office Manager for approval. The necessity for emergency purchases must be clearly explained and the explanation shall accompany the voucher covering payment.

5. So far as practicable, facilities and stock of the Procurement Division, Treasury Department, shall be utilized.

6. Purchase orders for all items in excess of $500 and purchases made under the provisions of Paragraph 2a, above, shall be approved by the Executive Assistant or the Office Manager.

STEWART MCDONALD,
Administrator.

67 Rev: 5 7 37

EXCERPT FROM MIMEOGRAPH INSTRUCTION DATED MAY 16, 1938, TO DIRECTORS AND MANAGERS OF ALL FIELD OFFICES, FROM ABNER H. FERGUSON, GENERAL COUNSEL, FEDERAL HOUSING ADMINISTRATION

FEDERAL HOUSING ADMINISTRATION,
Washington, D. C., May 16, 1938.

To: DIRECTORS AND MANAGERS OF ALL FIELD OFFICES.

Subject: A. * * *

B. Service of Garnishment Papers Upon Officials or Employees of the Federal Housing Administration.

A. * * *

B. State and District Directors should also accept service of papers in garnishment proceedings *under*

which the Administrator is named as garnishee. The papers should be immediately forwarded to the General Counsel in Washington, who will promptly turn them over to the Department of Justice to be forwarded to the United States Attorney in authority in the jurisdiction where the case is pending. If it appears that a judgment by default may be entered before the papers can be put in the hands of the United States Attorney, the Director should arrange with counsel issuing the garnishment for a postponement of time for a sufficient period to permit the United States Attorney to file an answer. [Emphasis supplied.]

ABNER H. FERGUSON,
General Counsel.

MATTER PERTAINING TO UNITED STATES OF AMERICA *v.* WINKLE TERRA COTTA, INC., NO. 11547 PENDING IN UNITED STATES CIRCUIT COURT OF APPEALS, EIGHTH CIRCUIT

TELEGRAM DATED JUNE 20, 1939, FROM J. W. KUHLMAN, DISTRICT DIRECTOR OF FEDERAL HOUSING ADMINISTRATION, ST. LOUIS, MO., TO ABNER H. FERGUSON, GENERAL COUNSEL, FEDERAL HOUSING ADMINISTRATION

WJ163 36 Govt—St. Louis, Mo., Jun. 20, 1939 109P.

ABNER FERGUSON,
General Counsel, F. H. A.:

Title to Decker property 002966 shows judgment against F. H. A. favor Winkler Terra Cotta. Purchaser wants definite assurance that he will not suffer because of this judgment. Wire answer as deal was to be closed today.

J. W. KUHLMAN.

2. LETTER DATED JULY 25, 1939, FROM J. W. KUHLMAN, DISTRICT DIRECTOR OF FEDERAL HOUSING ADMINISTRATION, ST. LOUIS, MO., TO ABNER H. FERGUSON, GENERAL COUNSEL, FEDERAL HOUSING ADMINISTRATION

Office of
DISTRICT DIRECTOR
SAINT LOUIS, MO.

FEDERAL HOUSING ADMINISTRATION,
July 25, 1939.

Air Mail
Re United States of America
v.
Winkle Terra Cotta, Inc.

MR. ABNER H. FERGUSON,
General Counsel, Federal
Housing Administration,
Washington, D. C.

DEAR MR. FERGUSON: With further reference to the above-captioned case, I am enclosing herewith letter from Harry C. Blanton, United States District Attorney, with copy of injunction granted on the 20th of this month in Federal Court No. 3 of the Eastern District of Missouri.

Due to the fact that the title companies of St. Louis and St. Louis County have as a matter of record, judgment in the above case, it is causing us quite a little difficulty in disposing of properties owned by the Administration.

Yours very truly,

J. W. KUHLMAN,
District Director.

Enclosures.

3. LETTER DATED SEPTEMBER 21, 1939, FROM FORDYCE, WHITE, MAYNE, WILLIAMS & HARTMAN, COUNSEL TO FIRST NATIONAL BANK, ST. LOUIS, MO., TO AUDITING DEPARTMENT OF THAT BANK

FORDYCE, WHITE, MAYNE, WILLIAMS & HARTMAN
506 Olive St.,
St. Louis, Missouri

SEPT. 21, 1939.

Re *Winkle Terra Cotta, Inc.* vs. *Federal Housing Administration, First National Bank, Garnishee.*

AUDITING DEPARTMENT,
First National Bank, St. Louis, Mo.

GENTLEMEN: Your letter of September 20th received, in which you enclosed a copy of a letter from Gus O. Nations, attorney representing the plaintiff in the above proceedings, and also a copy of the petition for stay of proceedings and extension of time for the filing of interrogatories.

We have been in communication with Mr. Vandivort, Assistant United States District Attorney, and informed him that you had received the petition from Mr. Nations, and stated that we would like to cooperate with his office in this matter, but for the protection of the Bank we considered it advisable to withhold sufficient funds to satisfy the plaintiff's claim, in the event the Circuit Court of Appeals should ultimately decide that the judgment which plaintiff has obtained against the Federal Housing Administration is valid, and that if such a decision is made, of course, the Bank would be liable in the garnishment proceeding.

Mr. Vandivort stated that he would discuss the matter with Mr. Blanton, United States District Attorney, and see whether this would be agreeable.

We have now heard from Mr. Vandivort, in which he states that he appreciates that the Bank wishes to

protect itself in the proceeding, and although he has no specific authority, he believes that it would be satisfactory to withhold from the funds of the Federal Housing Administration an amount to equal the judgment which plaintiff has obtained, which he states is approximately $3,000.00.

However, the judgment is drawing interest and as the case will not be decided for several months, we feel that in order to safeguard the Bank, you should at least withhold $3,250.00, which should be a sufficient amount to pay the judgment, interest, and costs. Therefore, pending the final hearing of the case in the Circuit Court of Appeals, we recommend that you withhold from the funds of the Federal Housing Administration the sum of $3,250.00, in order to protect the Bank in connection with this garnishment proceeding, and notify the Federal Housing Administration that such action is being taken.

Yours very truly,

FORDYCE, WHITE, MAYNE, WILLIAMS & HARTMAN,

By WALTER R. MAYNE.

U. S. GOVERNMENT PRINTING OFFICE: 1939

No. 354.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1939.

FEDERAL HOUSING ADMINISTRATION, REGION NO. 4,
STATE DIRECTOR RAYMOND FOLEY,
Petitioner,

vs.

RUTH BURR, Doing Business as SECRETARIAL
SERVICE BUREAU.

On Writ of Certiorari to the Supreme Court of the State of Michigan.

BRIEF AND ARGUMENT OF RESPONDENT.

HENRY P. SEABORG,
ARTHUR H. RICE,
GUS O. NATIONS,
Attorneys for Respondent.

St. Louis Law Printing Co., 415 North Eighth Street. CEntral 4477.

INDEX.

Cases Cited.

Statute Cited.

No. 354.

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RUTH BURR, Doing Business as SECRETARIAL
SERVICE BUREAU.

On Writ of Certiorari to the Supreme Court of the
State of Michigan.

BRIEF AND ARGUMENT OF RESPONDENT.

OPINION BELOW.

The opinion of the Supreme Court of Michigan (R. pp. 12-15) is reported at 289 Mich. 91, 286 N. W. 169.

QUESTION PRESENTED.

Whether Federal Housing Administration is generally subject to suit in state courts.

BRIEF, OR SUMMARY, OF ARGUMENT.

I.

Congress has given unlimited consent to suits against Federal Housing Administration in state and federal courts.

Keifer & Keifer v. Reconstruction Finance Corporation et al., 306 U. S. 381, 59 S. Ct. 516;
National Housing Act, 12 U. S. C. A. 1702.

II.

Whether Federal Housing Administration, being generally subject to suit, may be sued in garnishment under the statutes of Michigan is a question of the local law of Michigan, and its determination by the Supreme Court of Michigan binds all other courts.

Federal Land Bank v. Priddy, 295 U. S. 229, 55 S. Ct. 705;
Keifer & Keifer v. Reconstruction Finance Corp. et al., 306 U. S. 381, 59 S. Ct. 516.

III.

The unlimited consent to suits against Federal Housing Administration includes consent to the civil action in garnishment provided by the statutes of the State of Michigan.

Keifer & Keifer v. Reconstruction Finance Corp. et al., 306 U. S. 381, 59 S. Ct. 516;
Federal Land Bank v. Priddy, 295 U. S. 229, 55 S. Ct. 705;
National Housing Act, 12 U. S. C. A. 1702.

IV.

Federal Housing Administration is a Corporation owned by the United States and engaged in the insurance business.

Keifer & Keifer v. Reconstruction Finance Corp. et al., 306 U. S. 381, 59 S. Ct. 516;
Dartmouth College v. Woodward, 4 Wheat. 636;
Liverpool and London Life and Fire Ins. Co. v. Oliver, Treasurer of Mass., 10 Wall. 566, 19 L. ed. 1029;
National Housing Act, 12 U. S. C. A. 1702 et seq.

V.

The argument that garnishment of Government-owned agencies entails added burdens or inconvenience to such agencies suggests no valid reason why the courts should modify the expressed will of Congress consenting thereto.

VI.

The fact that Congress gave unlimited consent to suits against Federal Housing Administration in state courts, but set up no statutory procedure to govern them, is clear indication of an intent that the civil procedure provided by state laws was intended by Congress to govern such proceedings.

Federal Land Bank v. Priddy, 295 U. S. 229, 55 S. Ct. 705.

ARGUMENT.

I. Congress has given unlimited consent to suits against Federal Housing Administration in state and federal courts.

Section 1 of the National Housing Act, 12 U. S. C. A. 1702, provides:

> "The President is authorized to create a Federal Housing Administration, all of the powers of which shall be exercised by a Federal Housing Administrator. * * * The Administrator shall, in carrying out the provisions of this title and titles II and III, be authorized, in his official capacity, to sue and be sued in any court of competent jurisdiction, State or Federal."

In Keifer & Keifer v. Reconstruction Finance Corporation, 306 U. S. 381, 59 S. Ct. 516, this court held that the sue-and-be-sued clauses in the acts creating or authorizing government-owned agencies constitute an unlimited consent to suit against such agencies. By its opinion the Court there swept aside the contention that instrumentalities of government are inherently immune from suit, saying "the government does not become the conduit of its immunity in suits against its agents or instrumentalities merely because they do its work. * * * Congress has embarked upon a generous policy of consent for suits against the government" in actions of all kinds. And it was there asserted that Congress has created forty corporations which are instrumentalities of government and which are fully subject to suit, regardless of their relationship to the government. In listing the forty corporations in footnote 3 of the opinion the Court stated that one of these is Federal Housing Administration.

II. Whether Federal Housing Administration, being generally subject to suit, may be sued in garnishment under the statutes of Michigan is a question of the local law of Michigan and its determination by the Supreme Court of Michigan binds all other courts.

Immunity from suit for governmental agencies does not exist unless expressly provided by Congress. Keifer & Keifer v. Reconstruction Finance Corporation et al., 306 U. S. 381, 59 S. Ct. 516. Hence, such agencies are not different from other persons or entities so far as suits against them are concerned.

Since Federal Housing Administration is generally subject to suit in state courts, like other corporations, whether it may be required to respond to any particular type of statutory action in the states is to be determined from the state statute involved and a consideration of the nature and purpose of the action which that statute creates. This calls for a construction of the statutory law of the state, on which the ruling of the highest court of that state is the ultimate touchstone. The judgment of no other court may be substituted for it.

This clearly appears from Federal Land Bank v. Priddy, 295 U. S. 229, 55 S. Ct. 705. That was a suit in the courts of Arkansas against the Federal Land Bank in which an attachment was sued out on the ground the bank was a foreign corporation. The bank contended it was not a corporation, but an instrumentality of government, and, as such, immune from the attachment provided by the statute of the state. The state court disallowed this claim, holding the bank is a foreign corporation and subject to the statutory attachment provided by state law. This Court, holding the Bank is an instrumentality of government, nevertheless said:

"The ruling of the state Supreme Court, that peti-

tioner is a foreign corporation within the meaning of the Arkansas attachment statute, and that the attachment was authorized by local law, presents only a state question, which is not open for review here."

III. The unlimited consent to suits against Federal Housing Administration includes consent to the civil action in garnishment provided by the statutes of the State of Michigan.

The Supreme Court of Michigan in this case held in that state "A writ of garnishment is a civil process at law, in the nature of an equitable attachment. The usual test as to the liability of a garnishee is whether the principal defendant could have maintained an action against the garnishee to recover the property in question" (R. p. 13). This statement of the nature and purpose of the garnishment action in Michigan may not be questioned here.

Is such a proceeding contemplated by or included in the general consent to suit expressed in the Act, 12 U. S. C. A. 1702, or the unlimited consent which this court holds is implicit in the general policy of the law? To assert that it is not, it seems to us, is to deny the very essence of this court's ruling in Keifer & Keifer v. Reconstruction Finance Corp. et al., 306 U. S. 381, 59 S. Ct. 516.

To hold that the consent extends to suits of every kind, save one—and that the single exception is the proceeding in garnishment—"would make application of a steadily growing policy of governmental liability contingent upon irrelevant procedural factors." The Keifer case, supra.

It is asserted by the petitioner that the Supreme Court of Michigan erred "in failing to hold that the 'sue-and-be-sued' clause of the Act was limited solely to suits arising out of the carrying out of the provisions of Titles I, II and III of the Act" (Brief, p. 5).

This is the doctrine which was rejected by this Court in Keifer's case, supra. There it was contended, likewise,

that the consent to suits against Home Owners' Loan Corporation was limited solely to suits arising out of the carrying out of the Act and that therefore suits on contracts which Home Owners' Loan Corporation was authorized to make were permitted, but suits on torts were not. Said the Court:

> "Regional claims immunity in any event because Congress has not subjected it to suit 'in tort.' It is assumed that the present action is not one upon a contract, express or implied, and therefore outside the purview of 'to sue and be sued.' The premise is not valid, nor does the conclusion follow.
>
> "In light of these statutes it ought not to be assumed that when Congress consented 'to suit' without qualification, the effect is the same as though it had written 'in suits on contract, express or implied, in cases not sounding in torts.' No such distinction was made by Congress, and no such interpolation into statutes has been made in cases affecting government corporations incorporated under state law or that of the district of Columbia. There is equally no warrant for importing such a distinction here. To do so would make application of a steadily growing policy of governmental liability contingent upon irrelevant procedural factors."

Thus does the contention that the consent to suit is "limited solely to suits arising out of the carrying out of the Act" fail. But even if the sue-and-be-sued clause be given the limited effect contended for, the present action in garnishment is included in the consent.

The record shows the judgment was for salary earned by Brooks, the principal defendant, as an employee of Federal Housing Administration (pp. 6, 11).

The Act (12 U. S. C. A. 1702) authorized Federal Housing Administrator to employ "such officers and employees as he may find necessary, and * * * fix their compensa-

tion." Thus the Administrator was expressly authorized to enter into contracts of employment with persons whose services were needed in carrying out the purposes of Federal Housing Administration.

If he failed to pay the compensation agreed upon in such contracts of employment, the employee, clearly, could maintain a suit, in state or federal court, to recover his salary. This would be a simple suit on a contract which the law expressly authorized Federal Housing Administration to make.

So the garnishment here is a suit or proceeding to recover the salary earned by Brooks, and is based on the contract of employment with Brooks. Under the garnishment statute the judgment creditor succeeds to his debtor's right and stands in his place.

If it be held Federal Housing Administration cannot be sued in garnishment for Brooks' salary, then, it seems to us, it must also be held Brooks could not sue to recover his salary. In either case the action is the same, is based on the same right and seeks the same result.

Petitioner says "it is the general policy of the Federal Government not to account to strangers" (Brief, p. 31). From this it is argued the Government's agent may not be garnished by "a stranger" who has no privity with the agent.

The obvious answer to this is that Congress has the power, which we think it has wisely exercised, to modify that policy. Moreover, if this be held ground for denying the right to proceed in garnishment, by a parity of reasoning, it will be impossible for the assignee of a note or one of the insurance policies or other contract issued by Federal Housing Administration to sue upon it. Thus, no one but the original party to a contract can acquire rights in it which may be vindicated in a judicial proceeding. This again makes the right of suit "contingent upon irrelevant procedural factors."

That Federal Housing Administration should be subject to garnishment is indicated as a matter of sound public policy. With large numbers of persons employed by newly-created Government-owned agencies, the courts should, unless clearly prevented by law, avoid any interpretation which might make of such agencies a refuge for defaulting debtors, who may resort to Government immunity to avoid payment of judgments against them.

Congress has provided the bankruptcy court as a sanctuary for those unable to pay, where they may be discharged by turning over to their creditors their accumulated assets. Those who can pay should not be permitted to use employment by Government-owned agencies as a shield to avoid payment without relinquishing their assets. Such practice may readily result in wide-spread public scandal. It would certainly not conform to what the opinion in the Keifer case so aptly calls "the expanding conception of public morality regarding governmental responsibility."

In the Keifer case this Court pointed out that Congress had, without qualification, consented "to suit," and that the unqualified language used could not be interpreted as though Congress had said "in suits on contract, express or implied, in cases not sounding in tort."

Neither is there to be found in the unqualified consent to suit against Federal Housing Administration the implication "in suits on contracts or tort, but not in suits on contract of employment when brought by a creditor under garnishment."

Whether consent to suit against an instrumentality of the Government includes garnishment under the state statute is ruled on principle in Federal Land Bank v. Priddy, 295 U. S. 229, 55 S. Ct. 705. There the action in the state court was against the Federal Land Bank, and a writ of attachment was issued on the ground the Bank was a

foreign corporation. The Bank defended in the state court on the theory it was not a corporation, but an instrumentality of government, and as such not subject to attachment under the state law.

This Court declared the Bank is an instrumentality of government, but the unlimited consent to suit found in the statute makes it liable to the attachment process in the state court. The similarity of attachment and garnishment, as proceedings ancillary to or in aid of other process, is apparent and requires no demonstration.

Petitioner says it will be harassed by many garnishments if it be held subject to such proceedings, and will not be able to protect itself as private businesses do by discharge of garnished employees (Brief, p. 27). We know of no law or principle which supports this assertion. If the agency be held liable to garnishment it may easily protect itself by following the established practice of many departments of the government which do not harbor employees against whom unsatisfied judgments are outstanding.

IV. Federal Housing Administration is a corporation owned by the United States and engaged in the insurance business.

In the petition for the writ of certiorari it is said Federal Housing Administration "is an unincorporated agency of the United States, operating with funds supplied wholly by the United States," as a basis for the argument that as such it may not be sued as garnishee.

Of this we believe it may be appropriately said, in the language of the Court in Keifer's case, "the premise is not valid, nor does the conclusion follow."

The corporate or noncorporate character of Federal Housing Administration is probably not of controlling importance, since the general consent to suit does not depend

on its being a corporation. Its suability is the same whether it is or is not a corporation.

But a consideration of the statute creating it, and the obvious Congressional purpose underlying it, leads inevitably to the conclusion it is a corporation.

The Act says (12 U. S. C. A. 1702):

> "The President is authorized to create a Federal Housing Administration, all of the powers of which shall be exercised by a Federal Housing Administrator."

We believe the legal consequence of this language is no different than if Congress had said:

> "The President is authorized to create a Federal Housing *Corporation*, all of the powers of which shall be exercised by a *director*."

And if this latter language had been used, no question of the corporate character of the agency would be raised. It is a legal entity, created by express statutory authority, with all the attributes, characteristics and powers of a corporation, and is controlled by a one-man board of directors.

What is and what is not a corporation, as was ruled by Chief Justice Marshall in the Dartmouth College case (Dartmouth College v. Woodward, 4 Wheat. 636), is to be determined by the nature of the entity and not by what it is called. An identical case is that of Liverpool and London Life and Fire Insurance Co. v. Oliver, Treasurer of Massachusetts, 10 Wall. 566, 19 L. ed. 1029.

That plaintiff was organized, by deed of settlement and special acts of Parliament, to engage in the insurance business. The creative act expressly provided it should not be a corporation. When it engaged in business in Massachusetts that state sought to collect taxes imposed on insurance corporations by the state law. The defense

tax. The act of Parliament creating it and declaring it was not a corporation was invoked in support of this defense.

But this Court, after outlining the powers given the entity by the act of its creation, said of this:

> "It will be seen by this reference to the powers of the Association, as organized under the deed of settlement, legalized and enlarged by the Acts of Parliament, that it possesses many, if not all, the attributes generally found in corporations for pecuniary profit which are deemed essential to their corporate character.
>
> "1. It has a distinctive and artificial name by which it can make contracts.
>
> "2. It has a statutory provision by which it can sue and be sued in the name of one of its officers as representative of the whole body, which is bound by the judgment rendered in such suit.
>
> "3. It has provision for perpetual succession. * * *
>
> "4. Its existence as an entity apart from the shareholders is recognized by the Act of Parliament. * * *
>
> "*It is said that the fact that there is no provision either in the deed of settlement or the Act of Parliament for the Company suing or being sued in its artificial name forbids the corporate idea. But we see no real distinction in this respect between an Act of Parliament which authorized suits in the name of Liverpool and London Fire and Life Insurance Co., and that which authorized suit against that Company in the name of its principal officer.* If it can contract in the artificial name and sue and be sued in the name of its officers on those contracts, it is in effect the same, for process would have to be served on some such officer even if the suit were in the artificial name. (Italics supplied.)
>
> "It is also urged that the several acts of Parliament we have mentioned expressly declare that they shall not be held to constitute the body a corporation.

"But whatever may be the effect of such declaration in the courts of that country, it cannot alter the essential nature of a corporation or prevent the courts of another jurisdiction from inquiring into its true character, whenever that may come in issue.

* * * * * * *

"We have no hesitation in holding that, as the law of corporations is understood in this country, the Association is a corporation. * * *"

There is, of course, a difference in that Federal Housing Administration, being owned by the government, is a public corporation, whereas, the insurance company involved in the case cited was a private corporation. But the essential attributes of each are the same. Federal Housing Administration, being an invisible, intangible creature of the law, with power to contract, lend and borrow money, sue and be sued, acquire and own property, and be subject to state taxation, etc., is a body corporate. The fact it has no provision for issuance of capital stock or election of multiple directors does not affect its character as such. These features are also lacking in the corporation considered in Keifer's case, supra, as they are in innumerable boards, commissions, districts, counties, cities, executive departments and the United States of America, which are held to be corporations.

In a footnote to the Keifer case it is stated that Federal Housing Administration is a corporation and one that is suable as any other corporation. It is said by the petitioner that both the statute and the footnote to the Keifer opinion recognize a distinction between the Administration as a legal entity and the Administrator, who, the act says, "may sue or be sued." It is a distinction without a difference, as shown also by that part of this court's opinion in the Liverpool and London Life and Fire Insurance Co. case, supra, appearing in *Italics*, where the same argument was rejected. In this relation, we observe that it is the

"Administration" that was created, "all of the powers of which shall be exercised by the Administrator." All of the powers thus belong to the Administration. The exercise of them alone belongs to the person named administrator.

To hold here that in creating Federal Housing Administration Congress intended the creature to be something other than a corporation, while thirty-nine other similar agencies are expressly denominated "corporations," as was said in another relation in the Keifer case, "is to impute to Congress a desire for incoherence in a body of affiliated enactments and for drastic legal differentiation where policy justifies none." The further comment there is also pertinent: "A fair judgment of the statute in its entire setting relieves us from making such an imputation of caprice."

A due regard for the legislative purpose leads also to this result: Manifestly when Congress said (12 U. S. C. A. 1702, as amended August 23, 1935), "The administrator shall * * * be authorized in his official capacity, to * * * be sued in any court of competent jurisdiction, *state* or federal," it intended and believed that consent would be effective.

The whole of the act shows clearly the agency was to have its office at the seat of government and engage in nation-wide activities. Obviously suits such as were consented to might arise in any state, such as Michigan. How could the courts of Michigan obtain jurisdiction of the administrator in person? Must those who have claims necessitating suit file them in the District of Columbia? If so, what is the meaning and effect of the provision for suit in state courts? Or must litigants in the several states await a fortuitous time for the commencement of suit when the administrator will personally venture inside their respective states? Can it be said Congress, in enacting the law, was in such capricious mood that it

provided a substantial right but guarded against any effective use or enjoyment of it?

These questions suggest their own obvious answers. Congress undoubtedly thought it had not only established the right, but provided a practical remedy for its enforcement. We believe that Congress, having in mind the rule that a legal entity which has the attributes of a corporation is in fact a corporation, knew that it had provided for a corporation and knew that into whatever territorial jurisdiction it might go it would carry its inherent character and be subject to the local procedural and service statutes applicable to corporations.

In this view of the character of the agency, the legislative purpose is effectuated. Any contrary ruling would result only in frustration of the Congressional intent.

Neither is it accurate to say that Federal Housing Administration operates "with funds supplied wholly by the United States." It is true the original, or capital, funds were supplied by loans from Reconstruction Finance Corporation. But we believe the Court may judicially notice an official pronouncement of the Federal Housing Administration (see Appendix), dated and published October 28, 1939, in which it is said Federal Housing Administration has annual income from insurance premiums of $22,000,000, with total expenses of $13,500,000, resulting in earned surplus from its insurance enterprises of $8,500,000 annually.

V. The argument that garnishment of Government-owned agencies entails added burdens or inconvenience to such agencies suggests no valid reason why the courts should modify the expressed will of Congress consenting thereto.

The petitioner says if garnishment of Government-owned agencies is permitted, additional accounting, bookkeeping and legal services will be required by the agencies. This is obviously true. It is also true, and equally ob-

vious, that these added burdens or inconveniences are not peculiar to garnishment actions, but that any type of action consented to will cause similar consequences in some degree.

A result so certain to follow a general consent to suits of all kinds must have been in contemplation by the lawmaker when the consent was given. And Congress presumably concluded that the countervailing benefits of the policy decided on were equal or superior to the burdens to be assumed.

Howbeit, Congress is the policy-making authority, and the argument that the policy adopted is unduly burdensome to the agencies should be made to Congress. The Courts should not alter the law or refuse to give it effect because of a belief Congress has adopted an unwise or misguided policy.

There is nothing in the record to show or in the argument to indicate that such suits would interfere with or prevent the functioning of the agency.

VI. The fact that Congress gave unlimited consent to suits against Federal Housing Administration in state courts, but set up no statutory procedure to govern them, is clear indication of an intent that the civil procedure provided by state laws was intended by Congress to govern such proceedings.

Petitioner says if garnishment of Governmental agencies is to be permitted, "a statutory scheme" for effectuating it is an indispensable requisite (p. 28 et seq. of brief). And, in support of the assertion, he points to the somewhat divers statutory provisions respecting garnishments in the several states.

We believe the existence of time-tested and well-understood civil codes (including garnishment statutes) in the states is the all-sufficient reason for Congress' failure to prescribe such codes. The general consent to suits in state

courts, where full procedural codes are in operation, makes unnecessary a special code for suits against Governmental agencies. The establishment by Congress, in the Housing Act, of procedural codes for the state courts where suits may be brought would create intolerable confusion in such courts.

Congress no doubt had in mind what this court said in Federal Land Bank v. Priddy, 295 U. S. 229, 55 S. Ct. 705, where it was held general consent to suit against an agency in the court of Arkansas brought into operation the procedural laws of that state and made the agency liable to the attachment proceeding there provided.

Congress realized that Michigan has a garnishment statute, as Arkansas has an attachment statute. And we believe Congress intended that under the rule announced in the Federal Land Bank case, supra, suits against Federal Housing Administration in Michigan should be governed by the Michigan code, including the garnishment statute.

CONCLUSION.

We respectfully submit that:

1. Federal Housing Administration is subject to suit in state courts like any other natural or legal person.

2. This includes the civil action in garnishment, where the state statute so provides.

3. The decision of the Michigan court that Federal Housing Administration is such an entity as the statute applies to is a final determination of that question because it is a judicial construction of the Michigan statute. The decision of Michigan's Supreme Court should be affirmed.

HENRY P. SEABORG,
ARTHUR H. RICE,
GUS O. NATIONS,
Attorneys for Respondent.

APPENDIX.

Public Statement Issued by Federal Housing Administration, October 28, 1939.

No. 398

For Release in Papers of Saturday Afternoon, October 28, or Sunday Morning, October 29, 1939.

FEDERAL HOUSING ADMINISTRATION
1001 Vermont Avenue, N. W.
Washington, D. C.

Washington, D. C., October 28—The Federal Housing Administration will be entirely self-supporting in the next fiscal year, even to the extent of adding a substantial amount to its insurance reserves, Administrator Stewart McDonald announced today.

Estimates of the Administration's income in the year beginning July 1, 1940, show revenues of more than $22,000,000. This amount will be sufficient to cover expenses which probably will be about the same as this year, or $13,860,000, and to add more than $8,500,000 to the Mortgage Insurance Fund and the Housing Insurance Fund, maintained to meet possible losses on mortgage insurance.

Income of the FHA has been rising steadily, Mr. McDonald said; next year it will take a further jump due to the growing volume of mortgage insurance business and the institution of an insurance premium for lenders under the Title I modernization and repair loan program. At the same time, increased efficiency will permit the FHA to conduct its operations without increase in cost.

Up to now the FHA has paid a major part but not all of its operating expenses out of income. The remainder,

in a decreasing amount, has been paid by the Reconstruction Finance Corporation upon the authorization of Congress. This was done to enable the FHA to maintain offices in sparsely settled states where the volume of business was not sufficient to put the FHA on a completely self-sustaining basis while it was building up its insurance reserves out of income.

Thus, for the first time the FHA will not need assistance from any outside source in the next fiscal year. Congress will not be called upon to authorize any expenditure by the RFC for the FHA's expenses and will merely have to approve the FHA's employment of its own funds toward this purpose.

The largest share of the FHA's income in the next fiscal year will come from insurance premiums paid on mortgages already in effect; this, it is estimated, will exceed $9,000,000. In addition, initial insurance premiums on mortgages written during that year will amount to an estimated $3,500,000. Fees received for the examination of mortgage loan insurance applications are estimated at more than $3,600,000. Premiums from borrowers in order to pay off mortgages in advance of maturity will total about $500,000. Premiums and fees paid on large-scale housing mortgages will total about $1,500,000, while fees and premiums paid on Title I modernization loans will exceed $3,000,000. Income on investments will amount to about $900,000, bringing aggregate income to more than $22,000,000.

Expenses will be paid out of the Mortgage Insurance Fund and the Housing Insurance Fund and out of Title I premiums. There will be a surplus after these expenses are paid, which will approximate $8,500,000 and which will be added to the Insurance Funds.

P. 3

SUPREME COURT OF THE UNITED STATES.

No. 354.—October Term, 1939.

Federal Housing Administration, Region No. 4, State Director Raymond Foley, Petitioner,
vs.
Ruth Burr, doing business as Secretarial Service Bureau.

On Writ of Certiorari to the Supreme Court of the State of Michigan.

[February 12, 1940.]

Mr. Justice Douglas delivered the opinion of the Court.

The question presented here is whether the Federal Housing Administration is subject to garnishment for moneys due to an employee. The Supreme Court of the State of Michigan held that it was. 289 Mich. 91. We granted certiorari in view of the importance of the problem and the confused state of the authorities on the right to garnishee recently created agencies or corporations of the federal government [1]

In 1930 respondent obtained final judgment in Michigan against one Heffner and one Brooks. In 1938 petitioner was served with a writ of garnishment issued by the Michigan court.[2] Petitioner appeared and filed an answer and disclosure stating that Brooks was no longer connected with it due to his death subsequent to service of the writ but admitting that it owed Brooks at the time of his death $71.11. Its answer further asserted that it was "an agency of the United States Government and is, therefore, not subject to garnishee proceedings." On motion of respondent judgment was

[1] Garnishment of wages due an employee of the United States Shipping Board Merchant Fleet Corporation was disallowed in McCarthy v. United States Shipping Board Merchant Fleet Corp., 53 F. (2d) 922. *Contra:* Haines v. Lone Star Shipbuilding Co., 268 Pa. 92. As to the Home Owners' Loan Corporation, a similar conflict of decisions has arisen. That it is not subject to garnishment see Home Owners' Loan Corp. v. Hardie & Caudle, 171 Tenn. 43. And see Manufacturer's Trust Co. v. Ross, 252 A. D. 292. That it is subject to garnishment see Central Market, Inc. v. King, 132 Neb. 380; Gill v. Reese, 53 Oh. App. 134; McAvoy v. Weber, 198 Wash. 370.

[2] Mich. Stat. Ann. (1938) § 27.1855 *et seq.*

entered against petitioner for the amount of its indebtedness to Brooks and execution was allowed thereunder. On appeal to the Supreme Court of Michigan that judgment was affirmed.

The problem here is unlike that in *Buchanan* v. *Alexander*, 4 How. 20, where creditors of seamen of the frigate Constitution were not allowed to attach their wages in the hands of a disbursing officer of the federal government. That ruling was derived from the principle that the United States cannot be sued without its consent. There no consent whatsoever to "sue and be sued" had been given. Here the situation is different. Sec. 1 of Title I of the National Housing Act (Act of June 27, 1934, c. 847; 48 Stat. 1246) authorized the President "to create a Federal Housing Administration, all of the power of which shall be exercised by a Federal Housing Administrator." That section was amended in 1935 (Act of August 23, 1935, c. 614; 49 Stat. 684, 722) by adding thereto the provision that "The Administrator shall, in carrying out the provisions of this title and titles II and III, be authorized, in his official capacity, to sue and be sued in any court of competent jurisdiction, State or Federal."

Since consent to "sue and be sued" has been given by Congress, the problem here merely involves a determination of whether or not garnishment comes within the scope of that authorization. No question as to the power of Congress to waive the governmental immunity is present. For there can be no doubt that Congress has full power to endow the Federal Housing Administration with the government's immunity from suit or to determine the extent to which it may be subjected to the judicial process. *Federal Land Bank* v. *Priddy*, 295 U. S. 229; *Keifer & Keifer* v. *Reconstruction Finance Corporation*, 306 U. S. 381.

As indicated in *Keifer & Keifer* v. *Reconstruction Finance Corporation*, *supra*, we start from the premise that such waivers by Congress of governmental immunity in case of such federal instrumentalities should be liberally construed. This policy is in line with the current disfavor of the doctrine of governmental immunity from suit, as evidenced by the increasing tendency of Congress to waive the immunity where federal governmental corporations are concerned. *Keifer & Keifer* v. *Reconstruction Finance Corporation*, *supra*. Hence, when Congress establishes such an agency, authorizes it to engage in commercial and business transactions with the public, and permits it

to "sue and be sued", it cannot be lightly assumed that restrictions on that authority are to be implied. Rather if the general authority to "sue and be sued" is to be delimited by implied exceptions, it must be clearly shown that certain types of suits are not consistent with the statutory or constitutional scheme,[3] that an implied restriction of the general authority is necessary to avoid grave interference with the performance of a governmental function, or that for other reasons it was plainly the purpose of Congress to use the "sue and be sued" clause in a narrow sense. In the absence of such showing, it must be presumed that when Congress launched a governmental agency into the commercial world and endowed it with authority to "sue or be sued", that agency is not less amenable to judicial process than a private enterprise under like circumstances would be.

Clearly the words "sue and be sued" in their normal connotation embrace all civil process incident to the commencement or continuance of legal proceedings. Garnishment and attachment commonly are part and parcel of the process, provided by statute, for the collection of debts.[4] In Michigan a writ of garnishment is a civil process at law, in the nature of an equitable attachment. See *Posselius* v. *First National Bank*, 264 Mich. 687. But however it may be denominated, whether legal or equitable,[5] and whenever it may be available, whether prior to[6] or after final judgment,[7] garnishment is a well-known remedy available to suitors. To say that Congress did not intend to include such civil process in the words "sue and be sued" would in general deprive suits of some of their efficacy. Hence, in absence of special circumstances, we assume that when Congress authorized federal instrumentalities of the type here involved, to "sue and be sued" it used those words in

[3] Cf. Porto Rico v. Rosaly, 227 U. S. 270.

[4] See Shinn, Attachment & Garnishment, Chs. I, XXIII. As to garnishment of wage claims, see Sturges & Cooper, Credit Administration and Wage Earner Bankruptcies, 42 Yale L. Journ. 487, 503 *et seq.*

[5] Cf. Williams v. T. R. Sweat & Co., 103 Fla. 461; Compagna v. Automatic Electric Co., 293 Ill. App. 437, with Commercial Investment Trust, Inc. v. William Frankfurth Hardware Co., 179 Wis. 21; Diamond Cork Co. v. Maine Jobbing Co., 116 Me. 67.

[6] Col. Code Civ. Proc., ch. 7, § 129; Deering's Calif. Code Civ. Proc., § 543.

[7] N. Y. Civ. Prac. Act, § 684; Purdon's Penn. Stat. § 2994. In Michigan no garnishment for money owing the principal defendant on account of labor performed by him shall be commenced until after judgment has been obtained against such principal defendant. Mich. Stat. Ann., § 27.1855.

FILE COPY

No. 354

In the Supreme Court of the United States

OCTOBER TERM, 1939

FEDERAL HOUSING ADMINISTRATION, REGION NO. 4, STATE DIRECTOR RAYMOND FOLEY, PETITIONER

v.

RUTH BURR, DOING BUSINESS AS SECRETARIAL SERVICE BUREAU

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MICHIGAN

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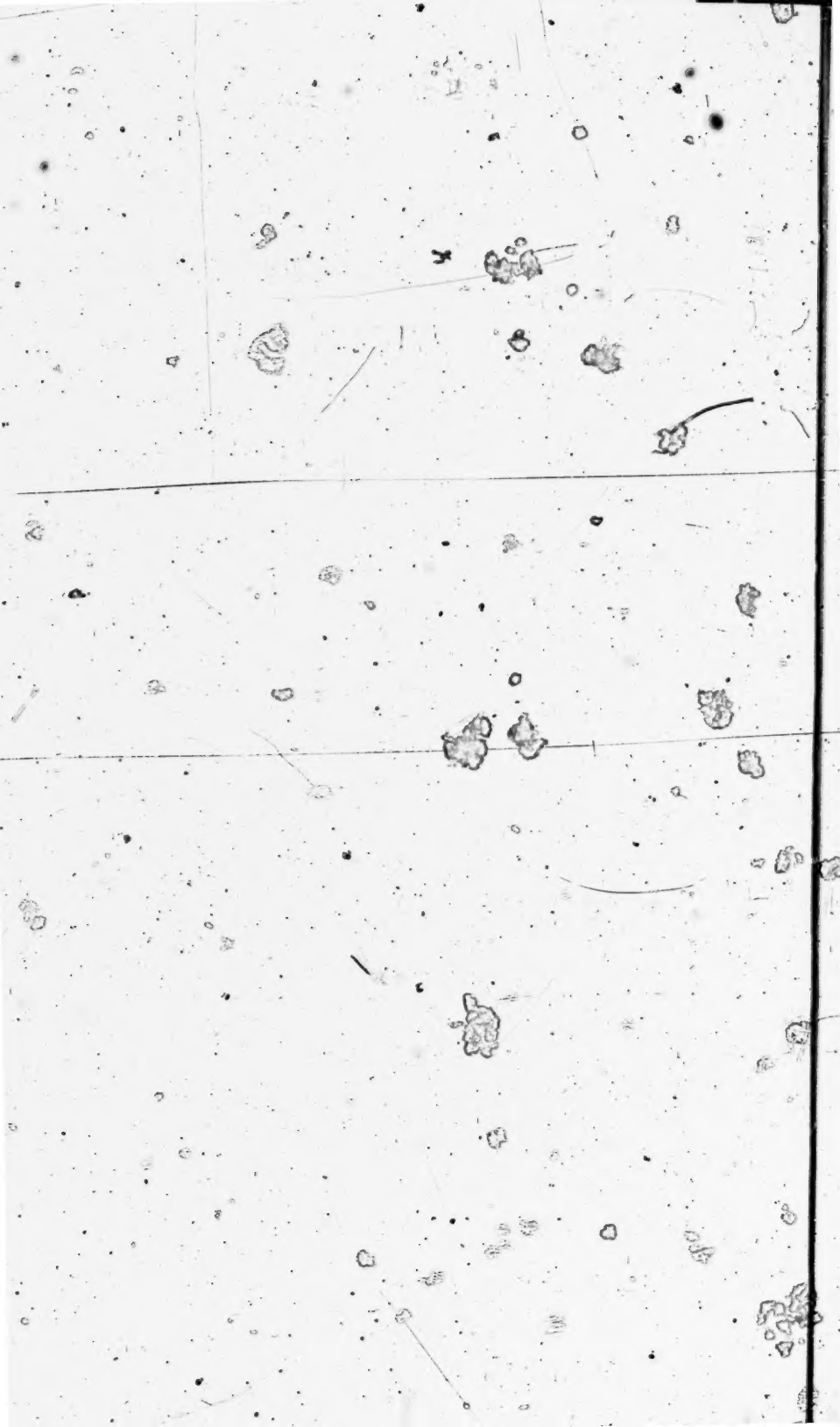

In the Supreme Court of the United States

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FEDERAL HOUSING ADMINISTRATION, REGION NO. 4, STATE DIRECTOR RAYMOND FOLEY, PETITIONER

v.

RUTH BURR, DOING BUSINESS AS SECRETARIAL SERVICE BUREAU

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MICHIGAN

The Solicitor General, on behalf of the petitioner, Federal Housing Administration, Region No. 4, State Director Raymond Foley, prays that a writ of certiorari issue to review the judgment of the Supreme Court of Michigan entered in the above case on June 5, 1939, affirming the judgment of the Circuit Court of Wayne County, Michigan.

OPINIONS BELOW

The opinion of the Circuit Court of Wayne County, Michigan (R. 10) is not reported. The opinion of the Supreme Court of Michigan (R. 12) is reported in 286 N. W. 169.

JURISDICTIONAL STATEMENT

The judgment of the Supreme Court of Michigan was entered on June 5, 1939 (R. 15). The jurisdiction of this Court is invoked under Section 237 (b) of the Judicial Code, as amended by the Act of February 13, 1925, on the ground that the decision below denied an immunity claimed by the petitioner under the Constitution and under the National Housing Act, as amended, c. 847, 48 Stat. 1246, c. 614, 49 Stat. 722, Sec. 344 (a). The case relied on to sustain the jurisdiction of this Court is *Federal Land Bank* v. *Priddy*, 295 U. S. 229.

The federal question was first raised by the petitioner's answer and disclosure wherein it was asserted that "the Federal Housing Administration is an agency of the United States Government and is, therefore, not subject to garnishee proceedings" (R. 6). The trial court held the petitioner subject to garnishment on the ground that the nature of the business of the Federal Housing Administration was not governmental but "that of an insurer of loans" (R. 10). The petitioner's ground of appeal from the trial court to the Supreme Court of Michigan was that "the Federal Housing Administration is an executive branch of the United States Government, which is a sovereign body politic, and cannot be sued without its consent, and is not within the jurisdiction of this court" (R. 4). The Supreme Court of Michgan affirmed the judgment of the court of first instance

on the ground that that immunity had been waived by the "sue-and-be-sued" clause of Section 1 of the National Housing Act, as amended (R. 12–15). The grounds upon which it is contended that the question involved is substantial are set forth under the Reasons for Granting the Writ, *infra*, pp. 5–9.

QUESTION PRESENTED

Whether the Federal Housing Administration, through its State Director, is subject to garnishment for moneys due to an employee.

STATUTE INVOLVED

Section 1 of the National Housing Act, approved June 27, 1934, c. 847, 48 Stat. 1246, as amended by the Act of August 23, 1935, c. 614, Sec. 344 (a), 49 Stat. 722 (12 U. S. C., Supp. IV, 1702), provides:

> * * * The Administrator shall, in carrying out the provisions of this title [title I] and titles II and III, be authorized, in his official capacity, to sue and be sued in any court of competent jurisdiction, State or Federal.

STATEMENT

On November 5, 1930, the respondent obtained a final judgment against one Heffner and a George Brooks (R. 4). Thereafter, on March 5, 1938, the petitioner was served with a writ of garnishment issued by the Circuit Court for the County of

Wayne, Michigan (R. 4).[1] Petitioner appeared in the cause and filed an answer and disclosure admitting that there was due and owing to Brooks by the Federal Housing Administration the sum of $71.11, and asserting "That the Federal Housing Administration is an agency of the United States Government and is, therefore, not subject to garnishee proceedings" (R. 6).

Respondent moved for judgment against the petitioner (R. 6), which motion was granted and judgment entered thereon in favor of the respondent (R. 11). Thereafter the petitioner appealed to the Supreme Court of Michigan, which affirmed the judgment of the Circuit Court (R. 15).

SPECIFICATION OF ERRORS TO BE URGED

The Supreme Court of Michigan erred:

1. In holding that the Federal Housing Administration is subject to garnishment proceedings.

2. In holding that the "sue-and-be-sued" clause of Section 1 of the National Housing Act, as amended, makes the Federal Housing Administration subject to garnishment proceedings.

3. In failing to hold that the "sue-and-be-sued" clause of the Act was limited solely to suits arising out of the carrying out of the provisions of Titles I, II, and III of the Act.

---

[1] The Federal Housing Administrator is not named as defendant, as is provided for in Section 1 of the National Housing Act, quoted above. However, no objection has been made on this ground by the Government, and it has treated the suit as against the Federal Housing Administration (R. 6).

4. In affirming the judgment of the Circuit Court for the County of Wayne, Michigan.

REASONS FOR GRANTING THE WRIT

1. The holding of the Supreme Court of Michigan that the Federal Housing Administration is subject to garnishment decides an important federal question which has not been but should be determined by this Court. The Federal Housing Administration was created by the President pursuant to the authority conferred upon him by the National Housing Act of June 27, 1934, c. 847, 48 Stat. 1246. It is an unincorporated agency of the United States, operating with funds supplied wholly by the United States and functioning as an integral part of a broad plan adopted to remedy the urban home-mortgage crisis. Its functions are governmental in character. Cf. *Graves* v. *New York ex rel. O'Keefe*, 306 U. S. 466. By the Banking Act of August 23, 1935, *supra*, p. 3, Section 1 of the Act was amended to provide that the Federal Housing Administrator "in carrying out the provisions of" titles I, II, and III of the Act, could sue and be sued in both federal and state courts.[2] The Supreme Court of Michigan held that

[2] Title I dealt with Housing Renovation and Modernization; Title II dealt with Mutual Mortgage Insurance; and Title III dealt with National Mortgage Associations. The legislative history of the amendment throws no light upon its interpretation with respect to the present controversy. See S. Rep. 1007, p. 24, 74th Cong., 1st Sess.; H. Rep. 1822, p. 57, 74th Cong., 1st Sess.

by reason of this amendment the Federal Housing Administrator was liable to garnishment proceedings brought by a creditor of an employee of the Administration.

The decision below is in substantial conflict with *McCarthy* v. *United States Shipping Board Merchant Fleet Corporation*, 53 F. (2d) 923 (App. D. C.), certiorari denied, 285 U. S. 547. In that case an attempt was made to garnish the wages of an employee of the Shipping Board. The Court of Appeals for the District of Columbia held that the Shipping Board was exempt from garnishment.[3] Although this Court had held, in *Sloan Shipyards* v. *U. S. Fleet Corporation*, 258 U. S. 549, that the Shipping Board was subject generally to be sued upon its contracts and torts, the Court of Appeals said (p. 923–924) that it did not follow that it was not exempt from garnishment—

> for such an agency may be permitted by law to sue or be sued upon its obligations without being subjected to attachment or garnishment in cases unrelated to its own duties or liabilities. The present case is governed by this rule.

The court below attempted to distinguish the *McCarthy* case on the ground that "That case was based on the Merchant Marine Act of 1920, 41 Stat.

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[3] *Contra: Haines* v. *Lone Star Shipbuilding Co.*, 268 Pa. 92, 110 Atl. 788.

988, which does not contain the broad waiver of immunity found in the Federal Housing Act" (R. 15). But in the *Sloan* case this Court held that the Shipping Board was originally subject unrestrictedly to suit by reason of its incorporation under the laws of the District of Columbia, and that the subsequent bestowal upon it of governmental powers did not give it immunity from suit. Thus the immunity of the Shipping Board from suit was certainly not greater than that of the Federal Housing Administrator, and was probably less.

The court below relied on *Federal Land Bank* v. *Priddy*, 295 U. S. 229, in which this Court held that a federal land bank was subject to attachment. The bank's charter stated that the bank might sue and be sued "as fully as natural persons." No such language appears in the Federal Housing Act. Moreover, the attachments stemmed from the land bank's performance of its own duties, not from a controversy between third persons in which the bank was not interested. Finally, the bank had many of the characteristics of private business corporations, including ownership of its stock by private interests, which are lacking in the case of the Federal Housing Administration.

In *Buchanan* v. *Alexander*, 4 How. 20, the leading case establishing the immunity of federal officers and instrumentalities from garnishment, it was pointed out that it would be embarrassing to

the Government to permit garnishment. This is well illustrated by *United States of America* v. *Winkle Terra Cotta, Inc.*, No. 11,587 pending on appeal before the United States Circuit Court of Appeals for the Eighth Circuit. The creditor there brought garnishment proceedings in the state court against the St. Louis Director of the Federal Housing Administration, who moved to dismiss, but was unsuccessful. Judgment went against the Federal Housing Administration. An appeal on behalf of the United States was disallowed on the ground that the United States was a stranger to the record. The United States then filed an injunction suit in the United States District Court for the Eastern District of Missouri against the creditor and the sheriff, to enjoin execution against the property of the Federal Housing Administration. The District Court dismissed the suit, and the United States has taken an appeal. The creditor has served writs of garnishment upon certain banks, as debtors of the Federal Housing Administration, and enjoined them from paying over money to the Federal Housing Administration until the debt was paid. Furthermore, the Federal Housing Administration cannot dispose of local property acquired through foreclosure because title companies have excepted the garnishment judgment from their guaranties of clear title.

2. The Act authorizing the creation of the Home Owners' Loan Corporation provides, without qualification, that the Corporation "shall have authority to sue and to be sued." Home Owners' Loan Act, 48 Stat. 128, c. 64, 12 U. S. C., Sec. 1463. With respect to whether the Home Owners' Loan Corporation is subject to garnishment, a sharp conflict has arisen in the state courts. It was held that it is not in *Home Owners' Loan Corporation* v. *Hardie & Caudle,* 171 Tenn. 43, 100 S. W. (2d) 238. And in *Manufacturers Trust Co.* v. *Ross,* 252 App. Div. 292, 299 N. Y. Supp. 399, it was held that the Home Owners' Loan Corporation was not subject to third party orders in supplementary proceedings. On the other hand, it was held that the Home Owners' Loan Corporation was subject to garnishment in *Central Market* v. *King,* 132 Neb. 380, 272 N. W. 244; *Gill* v. *Reese,* 53 Ohio App. 134, 4 N. E. (2d) 273; and *McAvoy* v. *Weber,* 88 P. (2d) 448 (Wash.).

In view of the number of governmental agencies and corporations, the wide range of their operations[4] and the confused state of the law in the lower courts, this Court should make an authoritative determination of their responsibility to garnishment proceedings.

[4] See "Federal Corporations and Corporate Agencies," Harvard Business Review, Vol. XVI, 436; "Government Corporations and Federal Funds," 31 American Political Science Review, 1094.

CONCLUSION

The decision of the court below is in substantial conflict with the decision of a United States Court of Appeals and is in conflict with decisions of other state courts. The question involved is one of substantial importance which calls for an authoritative ruling by this Court. Therefore it is respectfully submitted that this petition for a writ of certiorari should be granted.

ROBERT H. JACKSON,
Solicitor General.

September 1939.

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No. 354

In the Supreme Court of the United States

OCTOBER TERM, 1939

FEDERAL HOUSING ADMINISTRATION, REGION NO. 4, STATE DIRECTOR RAYMOND FOLEY, PETITIONER

v.

RUTH BURR, DOING BUSINESS AS SECRETARIAL SERVICE BUREAU

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MICHIGAN

BRIEF FOR THE PETITIONER

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OPINIONS BELOW

The opinion of the Circuit Court of Wayne County, Michigan (R. 10–11), is not reported. The opinion of the Supreme Court of Michigan (R. 12–15) is reported in 289 Mich. 91 and in 286 N. W. 169.

JURISDICTION

The judgment of the Supreme Court of Michigan was entered on June 5, 1939 (R. 15). The petition for a writ of certiorari was filed on September 2, 1939, and was granted on October 23, 1939. The jurisdiction of this Court rests on Section 237 (b) of the Judicial Code, as amended by the Act of February 13, 1925.

The petition for certiorari invoked the jurisdiction of this Court on the ground that the decision below denied an immunity claimed by the petitioner under the Constitution and under the National Housing Act, as amended, c. 847, 48 Stat. 1246, c. 614, 49 Stat. 684, 722, Sec. 344 (a), and relied on *Federal Land Bank* v. *Priddy*, 295 U. S. 229, to sustain the jurisdiction of this Court.

Federal question was raised by paragraph Third of petitioner's answer and disclosure in the trial court (R. 6) and also in the statement of reasons and grounds of appeal to the Supreme Court of Michigan (R. 4).

QUESTION PRESENTED

Whether the Federal Housing Administration, through its State Director, is subject to garnishment for moneys due to an employee.[1]

STATUTE INVOLVED

Section 1 of the National Housing Act, approved June 27, 1934, c. 847, 48 Stat. 1246, as amended by the Act of August 23, 1935, c. 614, 49 Stat. 684, 722, Sec. 344 (a) (12 U. S. C. Supp. IV 1702), provides:

> * * * The Administrator shall, in carrying out the provisions of this title [title I] and titles II and III, be authorized, in his official capacity,

[1] This is the statement of the question as set forth in the petition for certiorari. The record does not show the nature of the obligation garnished, whether for wages or otherwise, and the court below treated the question as not dependent on "whether or not the money represented wages due Brooks" (R. 12). Hence there is presented the broad question whether the Administration is subject to garnishment for moneys owing generally, not merely for wages.

to sue and be sued in any court of competent jurisdiction, State or Federal.

Section 1 of the National Housing Act as originally enacted, and the statute amending that section are set forth in the Appendix, *infra*, pp. 54–55.[2]

STATEMENT

On November 5, 1930, the respondent obtained a final judgment against one Heffner and a George Brooks, doing business as Heffner and Brooks (R. 4) in the Circuit Court of Wayne County, Michigan, in the sum of $102.63 (R. 3). Thereafter, on March 5, 1938, the petitioner was served with a writ of garnishment issued by that court (R. 4). Petitioner appeared in the cause (R. 6) and filed an answer and disclosure alleging that Brooks was "no longer connected with the Federal Housing Administration" due to his death after service of the writ, and admitting that there was due and owing to Brooks by the Federal Housing Administration at the time of his death the sum of $71.11 which remained unpaid[3] (R. 6). The answer further asserted: "That

[2] The National Housing Act (Act of June 27, 1934, c. 847, 48 Stat. 1246) has been amended eight times: Act of May 28, 1935, c. 150, 49 Stat. 293, secs. 22–31; Act of August 23, 1935, c. 614, 49 Stat. 722, sec. 344; Act of April 3, 1936, c. 465, 49 Stat. 1187; Act of April 17, 1936, c. 234, 49 Stat. 1233, secs. 3 and 4; Joint Resolution of February 19, 1937, c. 12, 50 Stat. 20; Act of April 22, 1937, c. 121, 50 Stat. 70; Act of February 3, 1938, c. 13; 52 Stat. 8; Act of June 3, 1939, Public No. 111, 76th Congress. Section 1 of the National Housing Act, here involved, has been amended but once. Act of August 23, 1935, c. 614, 49 Stat. 722, sec. 344 (a).

[3] The record is barren of a showing of how Brooks had been "connected" with the Administration, and of the nature of the obligation due him. However, the Brief of Appellant below,

the Federal Housing Administration is an agency of the United States Government and is, therefore, not subject to garnishee proceedings" (R. 6).

Respondent moved for judgment against the garnishee defendant, "Federal Housing Administration, Region #4, State Director, Raymond Foley" (R. 7) which motion was granted on the ground that the Federal Housing Administration is not "in any wise a part of the Federal Government" (R. 11) and that "the nature of its business is that of an insurer of loans" (R. 10). Judgment was entered in favor of respondent, not only granting recovery against petitioner but allowing respondent execution therefor (R. 11).

Petitioner appealed to the Supreme Court of Michigan, asserting in the statement of reasons and grounds of appeal: "That the Federal Housing Administration is an executive branch of the United States Government, which is a sovereign body politic, and can not be sued without its consent, and is not within the jurisdiction

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petitioner here, recites in the Statement of Facts (pp. 2-3): "At the time of service of the writ of garnishment, the principal defendant, George Brooks, was an employee of the United States, and received his pay from time to time from the Treasury Department of the United States, and worked directly under the Federal Housing Administration, which is an agency of the United States Government." And the Brief of Plaintiff-Appellee below, respondent here, under the caption Statement of Facts recites (p. 1): "Appellee herein accepts the statement of facts set forth in appellant's brief." The court below considered the question in its broad sense: "Is the Federal Housing Administration, a governmental agency, subject to being sued as garnishee defendant through its State Director?" (R. 12), adding: "No question is raised in this appeal as to whether or not the entire sum was garnishable, whether or not the money represented wages due Brooks, or the effect of his death" (R. 12).

of this court" (R. 4). The Supreme Court of Michigan affirmed the judgment of the Circuit Court (R. 15), adding costs against the petitioner and allowing execution therefor. It held that immunity had been waived by the "sue-and-be-sued" clause of Section 1 of the National Housing Act, as amended (R. 12–15). Without resting its decision on that ground, the court below also indicated agreement with the view of the trial court that the Federal Housing Administration was not engaged in a governmental function (R. 14). The court below later stayed proceedings for enforcement of the judgment pending its further order (R. 16).

SPECIFICATION OF ERRORS TO BE URGED

The Supreme Court of Michigan erred:

1. In holding that the Federal Housing Administration is subject to garnishment proceedings.

2. In holding that the "sue-and-be-sued" clause of Section 1 of the National Housing Act, as amended, makes the Federal Housing Administration subject to garnishment proceedings.

3. In failing to hold that the "sue-and-be-sued" clause of the Act was limited solely to suits arising out of the carrying out of the provisions of Titles I, II, and III of the Act.

4. In affirming the judgment of the Circuit Court for the County of Wayne, Michigan.

5. In allowing execution.[4]

[4] This fifth error was not explicitly specified in the specification of errors to be urged set forth in the petition for certiorari, but in the Reasons for Granting the Writ, the petition, in illustrating the burdens of garnishment, pointed to executions as such a burden (Petition, p. 8).

SUMMARY OF ARGUMENT

I

Section 1 of the National Housing Act, as amended, relied on by the court below as a waiver of immunity, authorizes "The Administrator" to be sued, not the Administration, or regional administrations or state directors. The State Director and not the Administrator was served. The Administration, and not the Administrator, was named as defendant, appeared and answered. Judgment was entered against the Administration. If there is power to do so, the Administrator waives for this case the misnomer of the defendant and the defective service, but in any event, the judgment should, if affirmed, be reformed so as to run against the Administrator in his official capacity rather than against the Administration.

II

A. It has long been settled that no garnishment by a creditor of an obligee of the Government is maintainable against the United States, its officer, or funds. *Buchanan* v. *Alexander*, 4 How. 20; *McCarthy* v. *United States Shipping Board Merchant Fleet Corporation*, [illegible] F. (2d) [illegible] (App. D. C.), certiorari denied, [illegible] U. S. [illegible]. This rule is derived from the immunity from suit of the United States, an immunity relaxed by Congress by authorizing the Administrator in carrying out certain parts of the National Housing Act to be sued. Whether the relaxation extends to garnishment depends on the statutory language and the implications of all relevant circumstances and considerations. *Federal*

Land Bank v. *Priddy*, 295 U. S. 229, 231–232; *Keifer & Keifer* v. *R. F. C.*, 306 U. S. 381, 389. Here explicit consent to garnishment is absent, the statutory language tends to preclude garnishment by strangers to Administration transactions, and numerous considerations argue against implying consent.

B. The immunity asserted is for the benefit of the Government itself, and is against strangers to its transactions. The trend of the times to relax the strictness of various immunities formerly thought implied by sovereignty and our federated system (E. g., *Keifer & Keifer* v. *R. F. C.*, 306 U. S. 381; *James* v. *Dravo Contracting Co.*, 302 U. S. 134; *Graves* v. *New York ex rel. O'Keefe*, 306 U. S. 466) leaves unimpaired the sharp distinction between according immunities to private persons who chance to deal with the Government and immunities inhering in the Government itself and its instrumentalities. Cf. *Clallam County* v. *United States*, 263 U. S. 341; *Pittman* v. *Home Owners' Loan Corporation*, No. 10, this Term, decided November 6, 1939. Decisions relaxing governmental immunity from suit (*Federal Land Bank* v. *Priddy*, 295 U. S. 229; *Keifer & Keifer* v. *R. F. C.*, *supra*) have been confined to suits growing out of transactions with the Government or its instrumentality. "Legal irresponsibility" disfavored by "dominant contemporary opinion," a disfavor made effective in the *Keifer* case, cannot result from freedom from garnishment by strangers. Freedom from garnishment involves no escape from legal obligations. While no reasons are advanced why federal obligees, so far as they alone are concerned, should be exempt from

normal remedies of their creditors, it is not controlling that as a consequence of protecting the Government benefit may flow to those obligees.

C. Considerations of policy show the need for protecting the Administrator from garnishment. The burden of the garnishment process would be directly on the Government. Past experience even under the settled law shows the degree to which garnishment may disrupt the normal functions of government. Procedural burdens, fact ascertainment, preparation and presentation of proof, accounting burdens, opening the Government's books to plaintiffs and the burden of numerous and protracted suits would combine to impede efficient conduct of the Government's business.

That garnishment is an unwarranted burden on public bodies is indicated in the experience of the states. Many states bar garnishments against public bodies either by judicial decision or by legislation. Many permit it by statute but with limitations and restrictions beyond those applicable to garnishments against private persons.

Factual data likewise show the burden of garnishment on public bodies. Garnishments relating to public employees tend sharply to outnumber those relating to private employees. Studies disclose that the claims incident to wage executions against large private concerns are many, and the clerical attention consumed large. Defensive measures attempted by large private employers, such as discharge of employees chronically garnished, show the burden. Such self-help, whatever its morality, is not so readily available to the Government,

and it would be severely disadvantaged as a practical matter.

If suability includes all civil process as held below, a multiplicity of related remedies will be available in many states both before and after judgment in the principal action, to reach obligations other than wages, and whether or not the principal action is contractual.

A statutory scheme is virtually indispensable if public agencies are to be subject to garnishment; hence abrogation of their immunity by judicial decision is highly undesirable. Various state statutory schemes for restricting garnishment differently in the case of public bodies than in the case of private garnishees show the need for systematic statutory regulation rather than judicial abrogation of the immunity, if abrogation is desirable. Selecting the precise scheme involves innumerable considerations, which can feasibly be adjusted only by statute.

The general policy of the federal Government is not to account to strangers. The policy is found in the statute relating to assignment of claims against the United States. Where Congress has lifted the restrictions, regulatory conditions have been imposed to protect the Government.

D. Garnishment against the Federal Housing Administration, an ordinary part of the Government, is garnishment of the United States. Any doubt whether the Administration's functions are governmental was set at rest by *Graves* v. *New York ex rel. O'Keefe*, 306 U. S. 466, 477.

Notwithstanding the provisions exempting the Administrator from laws relating to government

employment and expenditures, the Administration functions in fact as an ordinary part of the government without fiscal independence. Its funds are public money made available in accordance with regular governmental appropriation, requisition, and disbursement procedure. Disbursements and expenditures are made by the Chief Disbursing Officer of the Treasury. The Administration's fiscal transactions are subject to supervision of the Comptroller General, and budget matters to that of the Director of the Budget and Congress. The Administrator is in important respects subject to the supervision of the Secretary of the Treasury.

Except for the claimed waiver of immunty, this garnishment does not differ from garnishment of salary owing an employee of a regular Government department. Any authorized suit against the Administrator is in fact against the United States with its consent. Cf. *Banco Mexicano* v. *Deutsche Bank*, 263 U. S. 591, 602–603; *Becker Steel Co.* v. *Cummings*, 296 U. S. 74, 78; *Cummings* v. *Deutsche Bank*, 300 U. S. 115, 118. That the United States, for convenience, has appointed an agent to be sued makes no difference. *Cummings* v. *Societe Suisse*, 85 F. (2d) 287, 289 (App. D. C.) (reaffirmed, 99 F. (2d) 387, certiorari denied, 306 U. S. 631).

E. It is immaterial whether the Administration, or Administrator, is a corporation; any corporate status would furnish nothing beyond suability as permitted and limited by the express authority to be sued. The intimation that the Administrator may be a corporation (*Keifer & Keifer* v. *R. F. C.*, 306 U. S. 381, 390–391 footnote; *United States* v. *Maxen*, 307 U. S. 200,

203) is based on the authority to sue and be sued, hence it would beg the question to conclude from corporate status consent to be garnished. Corporate status is further immaterial since the Administration functions as a regular part of the Government without fiscal independence.

The question whether the Administrator has the status of a corporation has been reserved. *United States* v. *Marxen, supra.* If material here, it would be difficult to find corporate status. Language customarily employed in creating corporations and provision for usual corporate incidents, are lacking. By contrast, the same Act in clear and certain terms provided for the creation of other corporations.

F. The authority of the Administrator to be sued is expressly limited by the phrase "in carrying out the provisions of this title and Titles II and III," indicating a purpose to exclude cases based on claims against third persons unrelated to the Administrator's own duties and liabilities.

Traditionally, liability of the Government to suit is not enlarged beyond what the statutory language requires. The recent and less strict view, in the *Keifer* case, met an asserted immunity amounting to "legal irresponsibility," not involved in immunity from garnishment by a stranger. While Congress has generously conferred on its agencies explicit authority to be sued, it has jealously confined explicit authority to be garnished.

Suability has been held not to imply garnishability, both by the federal courts (*McCarthy* v. *United States*

Shipping Board Merchant Fleet Corporation, 53 F. (2d) 923 (App. D. C.), certiorari denied, 285 U. S. 547) and by the prevailing opinion of state courts. The statute here involved was enacted against the background of those decisions.

Suability does not imply liability to attachment and execution to satisfy an authorized judgment based even on a direct claim without further indicia of Congressional intent. Cf. *Federal Land Bank* v. *Priddy*, 295 U. S. 229. Indicia of such intent present in the *Priddy* case are here missing. Even more need be shown to support garnishment by a stranger. Moreover, the Court in the *Priddy* case expressly reserved the question of the effect of a showing of interference with federal functions, a showing absent there and present here.

If the Administrator is garnishable merely because suable, as held below, by like reasoning the United States would be garnishable where the garnished claim could be the subject of suit against the United States under the Tucker Act.

III

The judgments below, *in personam*, improperly allow execution. The applicable state statute allows execution to issue against the garnishee, "his own goods and estate." Interference of such executions with normal functions of the Administration is shown by the experience in *United States* v. *Winkle Terra Cotta, Inc.* (No. 11547 pending on appeal C. C. A. 8th). Enforcement of such executions would permit satisfaction of garnishment judgments out of money, or property ac-

quired with money, appropriated for other purposes. There is no indication of Congressional intention to subject Federal Housing Administration property to execution.

ARGUMENT

I

THE ADMINISTRATOR, IF EMPOWERED TO DO SO, WAIVES THE DEFECTIVE SERVICE AND MISNOMER OF DEFENDANT, BUT THERE IS SOME DOUBT AS TO HIS POWER

Section 1 of the National Housing Act, as amended, quoted, *supra*, pp. 2–3, authorizes "The Administrator" to be sued, and not the Administration, or regional administrations, or state directors. In this case the State Director and not the Federal Housing Administrator was served, and the Administration, and not the Administrator, was named as defendant.[5] However, appearance was entered on March 7, 1938, by the United States Attorney "for Federal Housing Administration, Region #4, State Director Raymond Foley, Garnishee Defendant" (R. 6) and the answer and disclosure was that of "Federal Housing Administration by Raymond M. Foley, State Director" (R. 6). No objection was made by the Government on the ground that petitioner was made garnishee defendant rather than the Administrator, and it treated the proceedings throughout as

[5] At the time this suit was begun the state directors had no authority to accept service for the Administrator. By circular of May 16, 1938, the Administrator through his general counsel authorized state and district directors to "accept service of papers" where the Administrator was named as garnishee. The relevant portion of the circular is included in the Appendix, *infra*, pp. 71–72. Here, as has been pointed out, the Administration, not the Administrator, was named.

against the Federal Housing Administration. (See petition for certiorari, page 4, note 1.) The opinion below treats the proceeding as against the Administration. Judgment was entered simply "against the said garnishee defendant" (R. 11) which refers presumably to the named party, "Federal Housing Administration, Region #4, State Director, Raymond Foley," particularly in light of the respondent's motion for judgment (R. 7).

While the Government is anxious for a decision whether the Administrator is subject to garnishment, and accordingly does not desire to press the objection in this case, it is open to question whether the appearance of the United States Attorney for the Federal Housing Administration, or his failure to object that suit could be maintained only against the Administrator, or the Government's present willingness not to press the objection can operate to waive what may be held to be a jurisdictional defect,[*] or whether under the circumstances the defect can be deemed a mere misnomer of parties. Even the Attorney General is without power to waive the exemption of the United States from suit. Cf. *Minnesota* v. *United States*, 305 U. S. 382, 388–389; *Stanley* v. *Schwalby*, 162 U. S. 255, 269–270. Similarly a United States Attorney has "no power to waive conditions or limitations imposed by statute in respect of suits against the United States."

[*] The phraseology of the "question presented" in the petition for certiorari, which is the same as in this brief (*supra*, p. 2), is probably sufficiently broad to embrace this question. It is: "*Whether the Federal Housing Administration, through its State Director*, is subject to garnishment for moneys due to an employee." (Emphasis supplied.)

Munro v. *United States*, 303 U. S. 36, 41. Cf. *United States* v. *Turner*, 47 F. (2d) 86 (C. C. A 8th). In *United States* v. *Cummings*, 85 F. (2d) 273 (App. D. C.), a judgment against an officer in his official capacity in a suit which had been begun against a predecessor was held wholly void, because of failure to secure an order of substitution.

Plainly the defect here, whether or not subject to waiver, is more than a mere technicality. The local director had no authority to submit to the jurisdiction of the state court, even if garnishment against the Administrator were authorized. The Administrator, even if he had been named as a party, might have refused to accept service of process of the state court. It was clearly the intention of Congress to protect the Administration from certain of the harassments of litigation by confining suability to a forum where the Administrator was amenable to service of process, and by leaving the question of his participation in other litigation, whether as plaintiff or defendant, to his sound discretion.[7] And this Congressional policy is considerably impaired if a local director or a United States Attorney can by their conduct thwart the statutory scheme that the Administrator must be served or appear voluntarily.

If, however, the Administrator has power to do so, he desires to waive for this case the misnomer of the defendant and the defective service. On the other hand, if the judgment is affirmed, it should be reformed so as

[7] Cf. Section 30 of the Trading with the Enemy Act, 50 U. S. C. A., Appendix, c. 167, 45 Stat. 254, 275, which expressly limited garnishment suits to the District of Columbia.

to run against the Administrator in his official capacity rather than against the Administration.

II

THE FEDERAL HOUSING ADMINISTRATOR IS NOT SUBJECT TO GARNISHMENT

A. THE GOVERNMENT IS IMMUNE FROM GARNISHMENT

It has been settled since *Buchanan* v. *Alexander*, 4 How. 20, that no creditor of a Government employee can attach or garnish his wages by action against the United States, its officer or the funds from which such wages will be paid, unless the United States has consented to such proceedings.[8] This rule is unquestionably derived from and connected with the principle that the United States cannot be sued without its consent,[9] and that suits against property of the United States [10] or to establish interests therein [11] or affecting the use thereof [12] likewise cannot be maintained without the

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[8] See also *McGrew* v. *McGrew*, 38 F. (2d) 541, 544 (App. D. C.), certiorari denied, 281 U. S. 739; *McCarthy* v. *United States Shipping Board Merchant Fleet Corporation*, 53 F. (2d) 923 (App. D. C.) certiorari denied, 285 U. S. 547.

[9] *Keifer & Keifer* v. *R. F. C.*, 306 U. S. 381, 388; *Morrison* v. *Work*, 266 U. S. 481; *Nassau Smelting Works* v. *United States*, 266 U. S. 101; *Schillinger* v. *United States*, 155 U. S. 163; *United States* v. *Clarke*, 8 Pet. 436.

[10] *Goldberg* v. *Daniels*, 231 U. S. 218, 221–222; *Stanley* v. *Schwalby*, 147 U. S. 508, 512; *Walker* v. *Ford*, 269 Fed. 877. Cf. *Berrizzi Bros. Co.* v. *S. S. Pesaro*, 271 U. S. 562.

[11] *Leather* v. *White*, 266 U. S. 592, affirming 296 Fed. 477; *Cunningham* v. *Mason & Brunswick R. R.*, 109 U. S. 446.

[12] *Oregon* v. *Hitchcock*, 202 U. S. 60; *Louisiana* v. *Garfield*, 211 U. S. 70, 78; *International Postal Supply Co.* v. *Bruce*, 194 U. S. 601, 606; *Belknap* v. *Schild*, 161 U. S. 10, 24–25.

consent of the United States. As respects the Federal Housing Administrator, Congress has, however, relaxed the immunity from suit by providing that the Administrator shall, in carrying out certain parts of the National Housing Act, be authorized to be sued (Act of August 23, 1935, c. 614, Sec. 344 (a), 49 Stat. 684, 722). Whether this relaxation of immunity extends to garnishment depends, under the decisions of this Court, on both the wording of the statute and the presumable Congressional intention in the light of all relevant circumstances and considerations. See *Federal Land Bank* v. *Priddy*, 295 U. S. 229, 231–232; *Keifer & Keifer* v. *Reconstruction Finance Corporation*, 306 U. S. 381, 389. Here plainly there is no explicit consent to garnishment, the statutory language tends to preclude garnishment by strangers to transactions with the Administrator, and numerous considerations strongly indicate that no implied consent should be found.

B. THE IMMUNITY ASSERTED IS FOR THE BENEFIT OF THE GOVERNMENT ITSELF, AND IS AGAINST STRANGERS TO ITS TRANSACTIONS

While the trend of the times is to relax the strictness of various immunities formerly thought to be implied by sovereignty and our federated system (E. g., *Keifer & Keifer* v. *R. F. C.*, 306 U. S. 381; *James* v. *Dravo Contracting Co.*, 302 U. S. 134; *Graves* v. *New York ex rel. O'Keefe*, 306 U. S. 466) ~~that~~ here is, it is submitted, a sharp distinction between according immunities to private persons who chance to deal with the Government and immunities inhering in the Government itself, including, of course, its instrumentalities which are a part of the governmental structure (Cf. *Clallam County* v.

United States, 263 U. S. 341; *Pittman* v. *Home Owners' Loan Corporation*, No. 10, this Term, decided November 6, 1939). There is no reason why federal employees or contractors, so far as they alone are concerned, should be exempt from the nondiscriminatory exercise of normal remedies by their creditors against their wages or salary or contract price merely because their employment or transaction is with the Government. But from the standpoint of the Government there are potent reasons[13] why, in the absence of a clear consent, it should not be forced to be a party to litigation for collection of obligations arising out of transactions to which it was not a party nor into litigious relations with persons with whom it has had no dealings. Decisions curtailing governmental immunity have in the tax field dealt with private beneficiaries of the immunity (*Graves* v. *New York ex rel. O'Keefe*, *supra*) and in the suability field with suits growing out of transactions to which the Government or its instrumentality had been a party (*Federal Land Bank* v. *Priddy*, 295 U. S. 229; *Keifer & Keifer* v. *R. F. C.*, *supra*). There is nothing in the decisions of this Court tending to relax the immunity of the Government itself from state or local taxation[14] or to relax its immunity from suits based on transactions to which it was not a party.

The "dominant contemporaneous opinion" which occasioned the relaxation of immunity from suit in the *Keifer* case was the emerging disfavor of "legal irre-

[13] Set forth in detail, *infra*, pp. 19–33.

[14] This distinction is developed in more detail in our brief (pp. 37–49) in *Pittman* v. *H. O. L. C.*, No. 10, October Term, 1939.

sponsibility" of the Government. The immunity here asserted will not make for "legal irresponsibility"; it will merely confine the Administrator's obligation to respond to those with whom he or the Administration has had dealings. The Government can escape no legal obligation of its own or of the Administrator or Administration through freedom from garnishment process.

There being reasons for maintaining the immunity of the Administrator from garnishment for the Government's own protection, it is not controlling that as a consequence of that immunity benefit may flow to Government employees.

C. CONSIDERATIONS OF POLICY SHOW THE NEED FOR PROTECTING THE ADMINISTRATOR FROM GARNISHMENT

The procedural burden of subjecting the Administrator to garnishment process would be directly on the Government. In view of the settled rule that the Government is not subject to garnishment, the burden on the Government of garnishment to date has been relatively small, but it is safe to predict that if the decision below in the present case is affirmed the burden on the Federal Housing Administration and hence on the Government will hereafter be very substantial.

The reported cases [15] in which efforts have been made to subject the Government or its instrumentalities to

[15] Unsuccessful efforts: *McGrew* v. *McGrew*, 38 F. (2d) 541 (App. D. C.), certiorari denied, 281 U. S. 739; *McCarthy* v. *United States Shipping Board Merchant Fleet Corporation*, 53 F. (2d) 923 (App. D. C.), certiorari denied, 285 U. S. 547; *Home Owners' Loan Corporation* v. *Hardie & Candle*, 171 Tenn. 43;

garnishment process are almost certainly but a small proportion of the cases which have been brought, and are merely suggestive of the considerable, and possibly prodigious number of cases that would be brought if this Court held garnishable Government agencies which Congress has authorized to sue and be sued.[16] The recent growth in the number of governmental agencies and corporations and the wide range of their operations[17] gives ground for real apprehension as to the extent of the possible burden.

The extent to which a garnishment may be an interference with the normal functionings of government is well illustrated by *United States* v. *Winkle Terra Cotta, Inc.*, No. 11,547, now pending on appeal before the United States Circuit Court of Appeals for the Eighth Circuit. The creditor there brought garnishment proceedings in the state court against the St. Louis Director of the Federal Housing Administration, who moved to dismiss, but was unsuccessful. Judgment went against the Federal Housing Administration. An appeal on behalf of the United States was disallowed on the ground that the United States was a 'stranger' to

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Manufacturers Trust Co. v. *Maxwell Ross*, 252 App. Div. (N. Y.) 202.

Successful efforts: *Central Market* v. *King*, 132 Neb. 380, certiorari denied, 302 U. S. 687, on ground that the judgment below was not final; *Gill* v. *Reese*, 53 Ohio App. 134; *McAvoy* v. *Weber*, 88 P. (2d) 448 (Wash.).

[16] In the *Keifer* case the Court listed forty Government agencies upon which Congress has conferred authority to sue and be sued.

[17] See "Federal Corporations and Corporate Agencies," Harvard Business Review, Vol. XVI, 136; "Government Corporations and Federal Funds," 31 American Political Science Review, 1094.

the record. The United States then filed an injunction suit in the United States District Court for the Eastern District of Missouri against the creditor and the sheriff, to enjoin execution against the property of the Federal Housing Administration. The District Court dismissed the suit, and the United States has taken an appeal. The creditor has served writs of garnishment upon certain banks as debtors of the Federal Housing Administration, and enjoined them from paying over money to the Federal Housing Administration until the debt was paid. Furthermore, the Federal Housing Administration cannot dispose of local property acquired through foreclosure because title companies have excepted the garnishment judgment from their guaranties of clear title.[18]

If to the manifold duties of each federal agency there were added the burden of preparing answers, disclosures, and returns to numerous garnishment processes in the courts of each of the 48 states[19] it is not difficult to see that the federal functions would be appreciably impeded. There would be the burden of gathering and presenting the precise facts as to the Government's liability to the principal debtor, many of which facts would be ascertainable only by search of records and

[18] Matter pertaining to the foregoing difficulties is included in the Appendix, *infra*, pp. 72–75.

[19] "To carry out its activities the Federal Housing Administration maintains its headquarters in Washington and has established one or more offices in each State; one in Hawaii; and one in Alaska; altogether offices have been established in 104 important cities throughout the United States." Fifth Annual Report, Federal Housing Administration, p. 8, House Document No. 273, 76th Congress, 1st session.

at distant places, of ascertaining the right of the garnishment creditor, of preparing proofs and evidence, and of court appearances of counsel. The garnishment creditor could demand the production of the Government's books. And garnishment is not limited to relatively simple claims like wage claims. Even to permit an intelligent inspection by numerous garnishment creditors would produce a heavy and often repeated burden on the agency's staff. In the inevitable event of disputes, the Government would be faced with numerous and protracted suits. The Government, unlike a private employer, is bound to make strict defense; nor can Government officials submit the Government to any risk of double liability. Since the operations of the Federal Government's agencies reach into every jurisdiction in the United States, the Government would be faced with a substantial obstacle to the efficient conduct of its business if its agencies were subject to garnishment at the instance of every creditor of a debtor to whom they owed money.[20]

1. *Courts and legislatures have recognized the burden of garnishment on public bodies.*—The widespread judicial exemption of public institutions from the orbit of general garnishment statutes has been based on the desirability that such bodies be free from the manifold, even if incidental, burdens upon a garnishee, such as increased legal and bookkeeping costs, the annoyance of court appearances and returns, impossibility of

[20] A similar argument in reference to the immunity of the Government from state taxation is included in our brief (pp. 40–41) in *Pittman* v. *Home Owners' Loan Corporation*, No. 10, October Term, 1939.

finally settling accounts, and the occupation of the time of officials with suits with which the public institution has no concern.[21]

Legislatures have also seen the need for relieving public bodies from these burdens. Some have expressly forbidden, in greater or lesser degree, the garnishment of public officials or institutions.[22]

Statutes which expressly permit garnishment of public bodies in many cases contain provisions designed to mitigate the more pressing of the burdens resulting from susceptibility to garnishment. Some legislative schemes provide that the garnished official or body need not appear personally or may file a simplified return. (Colo. L. 1927, ch. 112; Nebr. Comp. Laws (1929), sec. 20–1012, 20–1013; N. M. Comp. Stat. (1929), sec. 59–127; S. D. Comp. Laws (1929), Sec. 2112–A–B), or that any oral testimony be so taken as to cause the least inconvenience to the official (Minn. Stat. (Mason's,

[21] See, e. g., *McDougal* v. *Board of Supervisors of Hennepin County*, 4 Minn. 184, at 189; *Merwin* v. *City of Chicago*, 45 Ill., at 135; *Switzer* v. *City of Wellington*, 40 Kan. 250, at 251, 254; *Duval County* v. *The Charleston Lumber Co.*, 45 Fla. 256, 262, 263; *Van Cott* v. *Pratt*, 11 Utah 209, at 212–213.

[22] See, e. g., Ga. Code (1933), sec. 46–206 (salaries of officials and employees of municipal corporations not subject to garnishment); Iowa Code (1935), sec. 12159 ("A municipal or political corporation shall not be garnished"); La. Code of Practice, Art. 647 (salaries of officials and state employees not garnishable); *cf.* La. Civil Code, Art. 1992; Mass. Gen. Laws (1932), c. 246, sec. 32, (The Commonwealth cannot be trusteed, *Dewey* v. *Garvey*, 130 Mass. 86, but cities, towns, and counties may be. *Hooker* v. *McLennan*, 236 Mass. 117); Mo. Rev. Stat. (1919), sec. 1848 (county collector, county treasurer, and municipal corporations cannot be garnisheed); Tex. Stat. (Vernon, 1936), Art. 1175 (5) (home-rule cities may immunize themselves from garnishment).

1927), sec. 9364. Va. Code (1930, sec. 6559–61)). Some statutes recognize the probability of burdensome controversies as to the proper amounts due by making the return of the government as to its debts to the principal defendant conclusive. (S. D. Comp. Laws (1929), sec. 2112–B: Utah Rev. Stat. (1933), sec. 104–19–26; *cf.* N. Y. Civil Practice Act, sec. 684 (8); N. M. Comp. Stat. (1929), sec. 59–127). To cover the increased cost to public bodies of permitting garnishment, at least one state imposes a fee for the privilege of securing disclosure (N. D. L. 1929, ch. 188). The use of the remedy against the state or public organization is also commonly restricted to cases where the plaintiff has secured a judgment against the principal debtor.[23]

2. *Factual data likewise shows the burden of garnishment on public bodies.*—This judicial and legislative recognition that interference with governmental functions is likely to accompany abrogation of the immunity from garnishment is confirmed in the experiences both of public institutions which have been subject to garnishment and of large private employers. A study made under the auspices of the Bureau of Labor Statistics of the United States Department of Labor revealed that in the area chosen for investigation, public service employees (employees of state, city, and local jurisdictions) were subjected to garnishment of wages and salaries at least two or three times more frequently

[23] Ala. L. 1923, No. 427; Cal. Code Civil Proc., sec. 710; Mich. Comp. Laws (1929), sec. 14902; N. M. Comp. Stat. (1929), sec. 59–127; N. Y. Civil Prac. Act, sec. 684 (8); Va. Code (1930), sec. 6559–61; Wash. Rev. Stat. (Remington), sec. 680–1–4; Wis. Stat. (1937), sec. 304.21; N. J. Rev. Stat. (1937), sec. 2:26–182 to 2:26–187).

than other occupational groups of workers.[24] Studies of the incidence of executions on the wages of employees of large private concerns disclose that the claims upon such employers are many, and the amount of time consumed and of necessary clerical attention is large.[25]

[24] Nugent, Hamm, Jones, *Wage Executions for Debt;* Bull. No. 622, Bureau of Lab. Statistics, U. S. Dept. of Labor (substantially reprinted in 42 Monthly Labor Review 285, 578; 43 Monthly Labor Review 51 (1936)), Tables 6 and 7 (Bull. No. 622, pp. 13–15; 42 Monthly Labor Review at pp. 297–299).

TABLE 6

Employer	Av. No. of employees	Number of executions	Rate per 1,000 employees
32 indus. establishments	16,555	341	20.6
New York City Admin.	[1] 135,000	10,691	79.2
A large railroad company	43,129	1,550	35.9

[1] Estimate.

Table 7 indicates that in Westchester County, New York (in 1934), the rate of garnishments of public service employees was the highest of all occupational groups, i. e., 15.3 per 1,000 persons subject to garnishment; the next highest figure is 8.7 for the group of employees in the service industries and trades. In New York and Kings counties the rate for public service employees was also highest, 92.9; the next highest figure was 13.6 for employees of manufacturers of nonpostponable goods. The study concludes that "in this area public service employees * * * are subject to frequent garnishment as compared with other occupational classes," but assigns no reason for this difference. Bull. No. 622 at p. 613.

On December 31, 1938, the number of regular employees of the Federal Housing Administration, exclusive of those employed on a per diem basis, was 4,055. Fifth Annual Report, Federal Housing Administration, p. 10. House Document No. 273, 76th Cong., 1st sess. At the rate of garnishment experienced by the New York City Administration, the Federal Housing Administrator would be subjected to 321 garnishments annually in respect of regular employees.

[25] Fortas, *Wage Assignments in Chicago* (1933), 42 Yale L. J. 526, 539–545.

It has been found that "the expense which wage assignments and garnishments put upon employers is fugitive, but nevertheless real. * * * Larger establishments * * * frequently maintain special departments for handling wage executions; which employ clerks and occasionally an attorney."[26] That wage executions cause expense and annoyance to the employer is universally attested to, moreover, by the measures of self-help adopted by employers to free themselves from the nuisance, such as discharging the delinquent employee.[27]

[26] Nugent, Hamm & Jones, *Wage Executions for Debt*, Bull. No. 622, Bur. of Labor Stat. U. S. Dept. of Labor (1936) p. 36; 43 Monthly Labor Review at 58.

See Fortas, *supra*, at p. 545, regarding Armour & Co.'s activities: "A high-salaried man in the personnel department devotes his entire time to wage assignments and garnishments against the company's plant employees. Two young attorneys spend part of their time assisting him. The wage assignment must be recorded in a permanent book and notices to detain wages must be sent to cashier and paymaster; the employee must be informed by whom his wages are claimed; releases must be received and notices thereof sent to cashier and paymaster. If the employee complains that his wages are unjustly claimed, the creditor is telephoned. This is considered a service to the employee (as indeed it may be in view of the unlikelihood of suit by the employee), not a protection to the company against the employee's suit if his wages are paid the creditor on an unjustified claim or an invalid assignment, and the creditor's word is generally accepted."

[27] Fortas, *supra*; Nugent, Hamm and Jones, *supra*, at 527 (43 Monthly Labor Review at 59); see also Smith, *History and Purpose of the Wage Assignment Statutes* (1920), 5 Mass. L. Q. 479, 487; Rosenthal, *Two Recent Cases on Wage Assignments* (1920), 5 Mass. L. Q. 472, 477–478. Employers have sought to bar executions by their molding of the employment contract. So far as has been found these attempts have been unsuccessful. They reflect, however, the anxiety of employers to free themselves from the burden of garnishment.

Since, as a practical matter the Government is not as free to terminate employment as private employers, and so to protect itself in part from the harassments of garnishment, whatever the morality of such measures, it has no means of avoiding the burden and it would be severely and unequally disadvantaged by being put in the same legal position as private employers.

In the present case, garnishment was sought only after a judgment against the principal debtor had been obtained. But if the use of the remedy is sustained here on the ground relied on below, that suability includes all civil process, it will follow by like reasoning, that garnishment, attachment, and a multiplicity of related remedies will be available in many states to plaintiffs as soon as the action is commenced.[28]

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[28] In at least sixteen states, garnishment, or a comparable remedy, may be had in most cases before judgment, without difficulty:

Alabama Code (1928), secs. 8051, 2, 3.

Arizona Rev. Code (1928), sec. 4258.

Arkansas Dig. Stat. (Pope, 1937), c. 77, sec. 6119.

California Code Civ. Proc. (1937), secs. 537-41.

Connecticut Gen. Stat. (1930), secs. 5712, 5763 (trustee process).

Florida Comp. Laws (1927), secs. 5284, 5299.

Georgia Code Ann. secs. 46-101, 46-102.

Massachusetts Gen. Laws (1932), c. 223, sec. 42; c. 246, sec. 1 (trustee process).

Maine Rev. Stat. (1930), c. 95, sec. 2; c. 100, secs. 1, 55.

Minnesota Stat. (Mason's 1936 Supp.), sec. 9356.

New Hampshire Pub. Laws (1926), c. 356 (trustee process).

New Mexico Stat. Ann. (1929), secs. 59-101.

Rhode Island Gen. Laws (1938), ch. 546, sec. 1; ch. 548, secs. 1-2; ch. 550 (trustee process).

S. D. Comp. Laws (1929), sec. 2453.

Texas Rev. Civ. Stat. Art. 4076.

Vermont Pub. Laws (1933), ch. 76, sec. 1746 et seq. (trustee process).

These remedies are not confined to actions on contractual claims against the principal defendant, and would be available to reach not merely wage claims against the Government but all money obligations owing to the principal defendant by the Government. With these methods of harassing the principal defendant at hand, and insuring ultimate collection of any judgment that might be rendered, it may be presumed that plaintiffs would seek to garnish as early as possible. The provisions in many state statutes disallowing garnishment on public bodies before judgment suggests a similar need for protection in that regard for the federal Government.

3. *A statutory scheme, rather than judicial abrogation of the immunity, is virtually indispensable.*—The state statutes permitting garnishment of public institutions indicate legislative recognition that if the remedy is to be permitted, the procedure must be carefully differentiated from that available against ordinary garnishees.[29] We have cited, *supra*, pp. 23–24, various state statutory provisions for restricting and regulating garnishment against public bodies, such as limiting garnishment to cases where judgment has been obtained in the principal action, making the return of the public official conclusive as to the indebtedness of the public body to the principal debtor, excusing the official from court appearance, lightening the burden on him if oral.

[29] Compare for example, § 3834 (14–29) of West Va. Code (1939 Supp.) (L. 1939, c. 66) dealing with garnishment against public bodies, with § 3834 (1–13) of West Va. Code (L. 1939, c. 67) dealing with garnishments against private persons.

deposition is necessary, or imposing fees on the plaintiff for the privilege.

Many other statutory variations from ordinary garnishment procedure are provided where the garnishee is a public agency. Alabama requires the consent of a public official (L. 1923, No. 427). Colorado (L. 1927, ch. 112) and Nebraska (Comp. Laws (1929), sec. 20–1013) provide that the official return need not include checks or warrants already drawn and signed but not yet issued. Both California (Code Civil Procedure, sec. 710 *et seq.*) and Wisconsin (Stat. (1937) sec. 304.21) allow no garnishment of sums due to contractors for public works.

Some states establish unique and elaborate procedures for collecting the garnished funds. N. Y. Civ. Pract. Act, sec. 684 (8); Wash. Rev. Stat., sec. 680–1–4 (no regular judgment in garnishment against the state but a "command" by the court to the state auditor); Wis. Stat. (1937), sec. 304.21. Others take especial care that the state be not held liable for the main debt. N. D. L. 1929, ch. 188; S. D. Comp. Laws (1929), sec. 2112–B. Certain statutes establish special rules as to service of process (Okla. Stat., Title 12, sec. 1193; Utah Rev. Stat. (1933), sec. 104–19–25–26). A comparable need of the Federal Government for extended time in which to answer in litigation is shown by Rule 12 (a) of the Federal Rules of Civil Procedure.

There are numerous variations in the type of claims which the statutes permit to be garnished in the case of public bodies. Certain of the statutes seem to cover all debts owing by the state (e. g., Okla. Stat. Title 12,

sec. 1192; Idaho Code (1932), sec. 6–507; Kan. Gen. Stats. (1935), sec. 60–940, 60–962), while others only wages and salaries of officials and employees (e. g., Ala. L. 1923, No. 427). The compensation of certain officials is specially exempt in some states (Ala. L. 1923, No. 427; Colo. L. 1927, ch. 112; Neb. Comp. Laws (1929), sec. 20–1012 et seq.). There are differences as to the duration of the lien of the garnishment writ (N. Y. Civ. Prac. Act, sec. 684 (6, 8); and Wis. Stat. (1937) sec. 304.21, both apply the lien to all sums coming due thereafter, until the principal judgment is paid), and as to the subject matter of the claim (Ala. L. 1923, No. 427 permits no garnishment on judgments arising from tort claims). Certain statutes apparently cover the state and all its subdivisions (e. g., Ala. L. 1923; No. 427; Mich. Comp. Laws (1929), sec. 14902; N. Y. Civ. Prac. Act, sec. 684 (8)), while others apply only to counties or municipal corporations or minor bodies or only some of these (e. g., Minn. Stat. (1927), sec. 9364; Idaho Code (1932), sec. 6–507; Nevada Comp. Laws (1929), Sec. 8710; Va. Code (1930), sec. 6559–61).[30]

If there is one conclusion which can be drawn from the existence of these permutations and combinations, it is that the abrogation of the immunity of public bodies from garnishment, if a desirable objective, is one that can be accomplished satisfactorily only by

[30] There are some states in which there seem to be no special provisions concerning garnishment of public bodies. Ariz. L. 1929, c. 50; Kan. Gen. Stats. (1935) sec. 60–940, 60–962; Mont. Rev. Codes (1921) sec. 9294; Tenn. Code (1934), Sec. 7714; Oreg. Laws (1920) sec. 258; Wyo. Rev. Stat. (1931), sec. 89–3113.

legislation. Even if the immunity of Government agencies from garnishment should be relaxed, the question whether the remedy should be molded in this way or that to fit the needs of government involves innumerable considerations which as a practical matter can be adjusted only by statute. These state statutes make apparent the need for a complete scheme for the application of the remedy to public bodies. Judicial abrogation of the principle of immunity would be inadequate. The state legislatures have made their variant choices. Here an authority to be sued, without any statutory scheme for subjecting the agency to garnishment, should not be construed as consent to garnishment.

4. *It is the general policy of the federal Government not to account to strangers.*—Legislation has long been on the books making the assignment of claims against the United States void, except in certain situations after the issuance of a warrant for payment.[31] Its pur-

[31] R. S. sec. 3477:

"All transfers and assignments made of any claim upon the United States, or of any part or share thereof, or interest therein, whether absolute or conditional, and whatever may be the consideration therefor, and all powers of attorney, orders, or the authorities for receiving payment of any such claim, or of any part or share thereof, shall be absolutely null and void, unless they are freely made and executed in the presence of at least two attesting witnesses, after the allowance of such a claim, the ascertainment of the amount due, and the issuing of a warrant for the payment thereof. Such transfers, assignments, and powers of attorney must recite the warrant for payment, and must be acknowledged by the person making them, before an officer having authority to take acknowledgements of deeds, and shall be certified by the officer; and it must appear by the certificate that the officer, at the time of the acknowledgement, read and fully explained the transfer, assignment, or warrant of attorney to the person acknowledging the same * * *."

pose is to protect the Government against the danger of "becoming embroiled in conflicting claims, with delay and embarrassment", and against being "harassed by multiplying the number of persons with whom it had to deal." *Martin* v. *National Surety Co.*, 300 U. S. 588, 594; *Hobbs* v. *McLean*, 117 U. S. 567, 576. Moreover, "its obvious purpose, in part, was to forbid any one who was a stranger to the original transaction to come between the claimant and the Government, prior to the allowance of a claim, and who, in asserting his own interest or share in the claim, pending its examination, might embarrass the conduct of the business on the part of the officers of the Government." (*Nutt* v. *Knut*, 200 U. S. 12, 20.) The statute was also of aid to the United States in that it rendered unnecessary the burdensome investigation of the validity of an alleged assignment. *Spofford* v. *Kirk*, 97 U. S. 484, 489–90.[32]

In particular classes of cases the bar of this statute has been raised, but always on conditions insuring protection to the United States. The Secretaries of Agriculture (Act of March 4, 1909, c. 301, 35 Stat. 1039, 1057, 5 U. S. C. 529), and Commerce (Act of June 17, 1910, c. 297, 36 Stat. 468, 524, 5 U. S. C. 595) may permit their employees to assign their wages, but only under the rules and regulations which they may prescribe. The Secretary of War has similar power to regulate the assignment by army officers of their pay. (Act of

[32] To the same general effect, see *McGowan* v. *Parish*, 237 U. S. 285, 291; *Goodman* v. *Niblack*, 102 U. S. 556, 560; *Bailey* v. *United States*, 109 U. S. 432, 439–40; *Freedman's Savings & Trust Company* v. *Shepherd*, 127 U. S. 494, 506; *Price* v. *Forrest*, 173 U. S. 410, 423.

March 2, 1907, c. 2511, 34 Stat. 1158, 1159, 10 U. S. C. 891.)[33] The assignment of contractors on emergency public works of their claims against the Government is permitted, but only if approved (Act of June 16, 1933, c. 90, 48 Stat. 195, 205, Title II, sec. 207 (a), 40 U. S. C. 407). The Agricultural Adjustment Act of 1938 provides another method of protection to the Government against dangers inherent in the permitted assignment of soil conservation payments by reserving to the Government the option to make payment without regard to the assignment. C. 30, 52 Stat. 31, 35, sec. 103 (g), 16 U. S. C. 590 h (g).

D. THE FEDERAL HOUSING ADMINISTRATION IS AN ORDINARY PART OF THE GOVERNMENT, AND GARNISHMENT OF IT IS GARNISHMENT OF THE UNITED STATES

The Federal Housing Administration was created and the Federal Housing Administrator was appointed on June 30, 1934,[34] pursuant to Section 1 of the National Housing Act, approved June 27, 1934, c. 847, 48 Stat. 1246. That Act was part of the broad plan adopted to remedy the urban home mortgage crisis. Section 1 provides that all the powers of the Administration are to be exercised by a Federal Housing Administrator, and further provides for the appointment of the officers, agents, and employees necessary to its operation.

Any doubt whether the functions of the Administration and Administrator are governmental was set at

[33] Cf. Joint Resolution of March 21, 1906, No. 10, 34 Stat. 824, 48 U. S. C. 171, permitting assignment of pay by teachers in Alaska under regulations of the Secretary of the Interior.

[34] See Executive Order No. 7280, promulgated January 28, 1936, evidencing the creation of the Federal Housing Administration on June 30, 1934, and validating and confirming the creation thereof.

rest by *Graves* v. *New York ex rel. O'Keefe*, 306 U. S. 466, 477, in which it was stated that since the "government derives its authority wholly from powers delegated to it by the Constitution, its every action within its constitutional power is governmental action."

And notwithstanding the provisions of Section 1 of the National Housing Act exempting the Administrator from "provisions of other laws applicable to the employment or compensation of officers or employees of the United States" and from "other provisions of law governing the expenditure of public funds" (Act of June 27, 1934, c. 847, 48 Stat. 1246–1247), the Administration functions in fact as an ordinary part of the Government [35] without fiscal independence such as might support an implication of suability in the absence of express authority, or such as might warrant an expanded construction of the "sue-and-be-sued" clause here involved.

All money used for payment of salaries of Federal Housing Administration employees is public money which cannot be drawn from the Treasury unless appropriated for that purpose by Congress.[36] (Constitu-

[35] See excerpts from First and Fifth Annual Reports of Federal Housing Administration, included in the Appendix, *infra*, pp. 55–62. See also General Order No. 2, Federal Housing Administration, included in the Appendix, *infra*, pp. 69–71.

[36] Under section 4 funds were to be obtained through the Reconstruction Finance Corporation, and at the President's discretion from any funds available to him for emergency purposes. The Reconstruction Finance Corporation is now credited, as for a repayment on a debt owing by it to the United States, for all the funds appropriated through it for the Federal Housing Administration, by the cancellation of notes of the corporation, and it is provided that any recoveries of funds disbursed for the Admin-

tion, Article I, Section 9. Cf. *Cummings* v. *Hardee*, 102 F. (2d) 622, 627, certiorari denied, 307 U. S. 637). All money so used is in fact so appropriated (e. g., c. 396, 50 Stat. 329, 350; c. 259, 52 Stat. 433). Salaries are paid upon the checks of the Disbursing Officer of the United States through the Division of Disbursement of the Treasury Department, in the same manner as salaries of other Government employees. (See e. g., Section 4, Executive Order 6166, June 10, 1933; F. H. A. Annual Report, 1938, House Document No. 273, 76th Congress, 1st Session, pp. 157, 174; F. H. A. Report, 1935, pp. 26, 44–47.)[37]

Disbursements and expenditures are made by the Chief Disbursing Officer of the Treasury (Third Annual Report of the Administration, pp. 53, 57). Funds for disbursement through him are made available in accordance with regular governmental appropriation, requisition, and disbursement procedure (Fourth Annual Report of the Administration, p. 91). All regular expense and other vouchers of the Administration are sent directly to him for payment and unusual vouchers are forwarded to the Comptroller General for preaudit (Fifth Annual Report of the Administrator, p. 174; Fourth, *id.*, p. 102; Third, *id.*, p. 57). The Comptroller General of the United States has uniformly treated the Administration as an integral part

istration, the disposition of which is not otherwise provided for by law, "shall forthwith be covered into the general funds of the Treasury." Act of February 24, 1938, c. 32, 52 Stat. 79–80, secs. 1 and 2.

[37] See also Statement of Facts accepted by appellee below, *supra*, pp. 3–4, note 3.

of the Government. (See, for instance, 15 Comp. Gen. 869, 870, 871; 16 Comp. Gen. 336, 338.)

Regular budgetary estimates of salaries and expenses have been submitted to the Director of the Budget for each year's expenditures (Third Annual Report of the Administration, p. 57; Fourth, *id.*, p. 91), and estimates for salaries and general operating expenses are regularly submitted to Congress in cooperation with the Director of the Budget (Fifth Annual Report of the Administrator, p. 157).

The Administrator is subject in some respects to the supervision of other officers of the Government. He can assign or sell property held by him in connection with the payment of insurance and collect or compromise obligations and legal or equitable rights only under regulations approved by the Secretary of the Treasury. Section 2 (c), c. 165, 49 Stat. 1187. The terms, conditions, and rate of interest payable on the Administrator's debentures is subject to the approval of the Secretary of the Treasury. Sections 204 (c) and (d), 207 (i), c. 13, 52 Stat. 8. The fiscal transactions of the Administration are subject to the supervision of the Comptroller General, and its budget matters to the supervision of the Director of the Budget and Congress, as noted hereinbefore.[38]

[38] Other indicia that the Administration is an ordinary branch of the Government are: establishment of and maintenance of accounts and records in accordance with government procedure (Fifth Annual Report, Federal Housing Administration, p. 157); prescription by the Comptroller General of a system of administrative accounts pursuant to section 309 of the Budget and Accounting Act, 1921, c. 18, 42 Stat. 20, 25, following generally the uniform accounting system of the Government (Letters from

A successful garnishment in Michigan thus would bring into operation in Washington the disbursement procedure at the Treasury and the auditing procedure of the Comptroller General. The practical fact is that the money sought to satisfy the respondent's claim constitutes funds of the United States. The fact that the money may have become owing to government employees does not change its character prior to actual disbursement. *Buchanan* v. *Alexander*, 4 How. 20, 21.

In view of these circumstances it is clear that, so far as the funds sought to be attached are concerned and so far as concerns the relationship of the principal debtor to the Government, there would be no difference be-

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Comptroller General to Administrator, July 11, 1936, and January 23, 1936, included in Appendix, *infra*, pp. 62–69); establishment by the Treasury Department and the Comptroller General of the regular governmental procedure for handling funds (Fourth Annual Report, Federal Housing Administration, p. 10); classification of employees and review and revision thereof by Civil Service Commission in accordance with Executive Order No. 6746, of June 21, 1934; initial appointments "as far as possible" in accordance with grades and salaries of Classification Act of 1923, c. 265, 42 Stat. 1488, and apportionment according to Apportionment Act of January 16, 1883, c. 27, 22 Stat. 403, 404 (Sec. 2 (2) (3) (First *id.*, p. 22); observance of standard travel regulations (Independent Offices Act, 1938, approved June 28, 1937, c. 396, 50 Stat. 329, 350). The annual reports of the Federal Housing Administration are printed as House Miscellaneous Documents, as follows: First (1934) Doc. 88, 74th Congress, 1st Session, S. N. 9927; Second (1935) Doc. No. 358, 74th Congress, 2nd Session, S. N. 10072; Third (1936) Doc. No. 48, 75th Congress, 1st Session, S. N. 10172; Fourth (1937) Doc. No. 696, 75th Congress, 3rd Session, S. N. 10284; Fifth (1938) Doc. No. 273, 76th Congress, 1st Session. Excerpts from the first and the latest reports are included in the Appendix, *infra*, pp. 54–62. See also, General Order No. 2, Appendix, *infra*, pp. 69–71.

their usual and ordinary sense.[8] State decisions barring garnishment against a public body though it may "sue and be sued"[9] are not persuasive here as they reflect purely local policies concerning municipalities, counties and the like, and involve considerations not germane to the problem of amenability to suit of the modern federal governmental corporation.

Our conclusion is strengthened by the legislative history of the many recently created governmental agencies or corporations. It shows that in but few instances was a proviso added to the "sue and be sued" clause prohibiting garnishment or attachment.[10] The fact that in the run of recent statutes no such exceptions were made and that in only a few of them were any special prohibitions included adds corroborative weight to our conclusion that such civil process was intended.

Up to this point, however, petitioner does not raise its major objections. Rather it grounds its claim to immunity from garnishment largely on statutory construction and on matters of policy. As to the former, it relies heavily on the fact that the authority to "sue and be sued" excludes cases unrelated to the Administrator's own duties or liabilities since the statute provides that the "Administrator shall, in carrying out the provisions of this title [Title I] and titles II and III" be authorized to "sue and be sued." Petitioner therefore contends that Congress has consented to a suit against the Administrator only where the plaintiff is a party to a

[8] In Weston v. City Council of Charleston, 2 Pet. 449, 464, Chief Justice Marshall, in defining the word "suit", as used in the 25th section of the Judicial Act of 1789 giving this Court jurisdiction to review on enumerated conditions a "final judgment or decree in any suit in the highest court of law or equity of a state in which a decision in the suit could be had" (43 Stat. 937), said:

"The term is certainly a very comprehensive one, and is understood to apply to any proceeding in a court of justice, by which an individual pursues that remedy in a court of justice, which the law affords him. The modes of proceeding may be various, but if a right is litigated between parties in a court of justice, the proceeding by which the decision of the court is sought, is a suit."

[9] Central of Georgia Ry. Co. v. City of Andalusia, 218 Ala. 514; Duval County v. Charleston Lumber Co., 45 Fla. 256, 265; City of Chicago v. Hasley, 25 Ill. 595.

[10] As respects the forty government corporations listed in Keifer & Keifer v. Reconstruction Finance Corporation, *supra*, pp. 390-391, where Congress included the authority to "sue and be sued", express prohibition against attachment and garnishment was provided in only two instances. They are the Federal Crop Insurance Corporation (52 Stat. 72, 73) and the Farmer's Home Corporation (50 Stat. 527).

transaction with him which in turn is related to "carrying out" the provisions of those titles. Title I contains the only provisions material here. Sec. 1 gave the Administrator, *inter alia*, authority to appoint such officers and employees "as he may find necessary;" to "prescribe their authorities, duties, responsibilities, and tenure and fix their compensation, without regard to the provisions of other laws applicable to the employment or compensation of officers or employees of the United States;" and to "make such expenditures (including expenditures for personal services and rent at the seat of government and elsewhere, for law books and books of reference, and for paper, printing, and binding) as are necessary to carry out the provisions of this title and titles II and III, without regard to any other provisions of law governing the expenditure of public funds." Sec. 2 gave limited authority to the administrator to insure financial institutions; § 3, authority to make loans to such institutions. Since the Administrator could be sued, in his official capacity, in "carrying out" the provisions of Title I, it would seem clear that such suits as were based on employment contracts made pursuant to the authority granted by § 1 were permitted. Accordingly, it seems clear that Brooks, whose claim[11] was garnisheed by respondent, could have sued on that claim and obtained the benefit of that civil process which was available in the appropriate state or federal proceeding. *Federal Land Bank* v. *Priddy, supra.* To allow respondent to reach that claim through a writ of garnishment is therefore not to enlarge petitioner's liability nor to add one iota to the scope of § 1. For the end result is simply to allow a suit for the collection of a claim on which Congress expressly made petitioner suable. The mere change in the payee does not make the suit unrelated to the duties and liabilities of the Administrator under § 1.

But petitioner strongly urges considerations of policy against this conclusion and stresses the heavy burdens which would be imposed on such governmental instrumentalities if garnishment were permitted. It asserts that the task of preparing answers, disclosures and returns to numerous garnishment processes in the courts of each of the states would appreciably impede the federal

[11] While the record shows that Brooks had been "connected" with the petitioner it does not show the nature of the debt due him. The brief which petitioner filed below, however, recited that Brooks was an employee; and no defense was interposed that the claim did not arise under Title I of the Act.

functions of such an agency. It points to various state legislation regulating and restricting garnishment against public bodies and concludes that if immunity of public bodies from garnishment is to be abrogated, it should be done by legislation so that the remedy could be appropriately molded to fit the needs of government.

In our view, however, the bridge was crossed when Congress abrogated the immunity by this "sue and be sued" clause. And no such grave interference with the federal function has been shown to lead us to imply that Congress did not intend the full consequences of what it said. Hence, considerations of convenience, cost and efficiency[12] which have been urged here are for Congress which, as we have said, has full authority to make such restrictions on the "sue and be sued" clause as seem to it appropriate or necessary.

There is some point made of the fact that suit was brought against the Federal Housing Administration rather than against the Administrator. But when the statute authorizes suits by or against the Administrator "in his official capacity" we conclude that that permits actions by or against the Federal Housing Administration. The Administrator acts for and on behalf of the Federal Housing Administration, since by express terms of the Act all of the powers of the latter "shall be exercised" by him. Hence action by him in the name of the Federal Housing Administration would be action in his official capacity.

Petitioner claims that execution should not have been allowed under the judgment. The Act permits the Administrator "to sue and be sued in any court of competent jurisdiction, State or Federal." Whether by Michigan law execution under such a judgment may be had is, like the availability of garnishment, *Federal Land Bank* v. *Priddy*, *supra*, a state question. And so far as the federal statute is concerned, execution is not barred, for it would seem to be part of the civil process embraced within the "sue and be sued" clause. That does not, of course, mean that any funds or property of the United States can be held responsible for this judgment. Claims against a corporation are normally collectible only from corporate assets. That is true here. Congress has specifically directed that all such claims against the Federal Housing Administration of the type here involved "shall be paid out of funds

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Hamm, Jones, Wage Executions for Debt, Bull. No. 622, Bureau of Lab. Statistics, U. S. Dept. of Labor.

[12] Cf. Fortas, Wage Assignments in Chicago, 42 Yale L. Journ. 526; Nugent,

made available by this Act." § 1. Hence those funds, and only those, are subject to execution. The result is that only those funds which have been paid over to the Federal Housing Administration in accordance with § 1 and which are in its possession, severed from Treasury funds and Treasury control, are subject to execution. Since no consent to reach government funds has been given, execution thereon would run counter to *Buchanan* v. *Alexander, supra*. To conclude otherwise would be to allow proceedings against the United States where it had not waived its immunity. This restriction on execution may as a practical matter deprive it of utility, since funds of petitioner appear to be deposited with the Treasurer of the United States and payments and other obligations are made through the Chief Disbursing Officer of the Treasury.[13] But that is an inherent limitation, under this statutory scheme, on the legal remedies which Congress has provided. And since respondent obtains its right to sue from Congress, it necessarily must take it subject to such restrictions as have been imposed. The fact that execution may prove futile is one of the notorious incidents of litigation, as is the fact that execution is not an indispensable adjunct of the judicial process.[14]

Affirmed.

Mr. Justice MURPHY did not participate in the consideration or decision of this case.

A true copy.

Test:

Clerk, Supreme Court, U. S.

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[13] Fifth Annual Report, Federal Housing Administration (1938), p. 157.

[14] See Nashville, Chattanooga & St. Louis Ry. Co. v. Wallace, 288 U. S. 249, 263; Commonwealth Finance Corp. v. Landis, 261 Fed. 440, 443-444. Cf. Pauchogue Land Corp. v. Long Island State Park Commission, 243 N. Y. 15; New South Wales v. Bardolph, 52 Commonwealth L. Rep. 455.